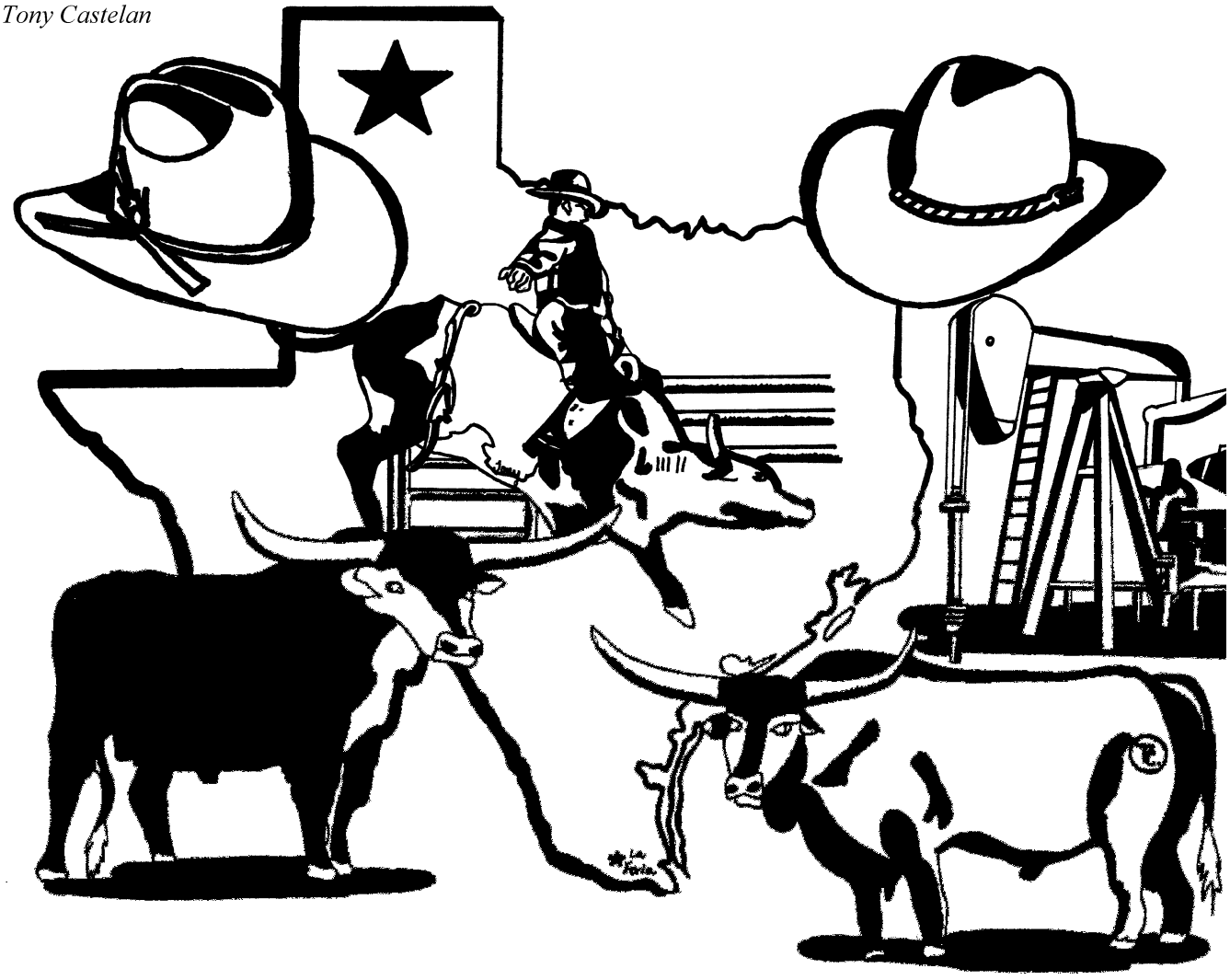
TEXAS REGISTER

Volume 32 Number 43 *October 26, 2007* *Pages 7553 - 7776*

Tony Castelan



School children's artwork is used to decorate the front cover and blank filler pages of the *Texas Register*. Teachers throughout the state submit the drawings for students in grades K-12. The drawings dress up the otherwise gray pages of the *Texas Register* and introduce students to this obscure but important facet of state government.

The artwork featured on the front cover is chosen at random. Inside each issue, the artwork is published on what would otherwise be blank pages in the *Texas Register*. These blank pages are caused by the production process used to print the *Texas Register*.

Texas Register, **(ISSN 0362-4781, USPS 120-090),** is published weekly (52 times per year) for $211.00 ($311.00 for first class mail delivery) by LexisNexis Matthew Bender & Co., Inc., 1275 Broadway, Albany, N.Y. 12204-2694.

The ***Texas Register*** is published under the Government Code, Title 10, Chapter 2002. Periodicals Postage Paid at Albany, N.Y. and at additional mailing offices.

POSTMASTER: Send address changes to the ***Texas Register,*** 136 Carlin Rd., Conklin, N.Y. 13748-1531.

a section of the
Office of the Secretary of State
P.O. Box 13824
Austin, TX 78711-3824
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IN THIS ISSUE

RULE REVIEW

TABLES AND GRAPHICS

IN ADDITION

THE GOVERNOR

As required by Government Code, §2002.011(4), the *Texas Register* publishes executive orders issued by the Governor of Texas. Appointments and proclamations are also published. Appointments are published in chronological order. Additional information on documents submitted for publication by the Governor's Office can be obtained by calling (512) 463-1828.

Appointments

Appointments for October 4, 2007

Appointed to the Texas Racing Commission for a term to expire February 1, 2011, Rolando Pablos of San Antonio (replacing Treva Boyd of San Angelo whose term expired).

Appointments for October 9, 2007

Appointed to the Texas Economic Development Corporation for a term to expire at the pleasure of the governor, Tracye McDaniel of Houston (replacing Sada Cumber of Austin who resigned).

Appointments for October 10, 2007

Appointed to the Texas Violent Gang Task Force for a term to expire at the pleasure of the governor, Geoffrey Barr of New Braunfels (replacing Dibrell Waldrip of New Braunfels who resigned).

Appointed to the State Administrator for the Interstate Agreement on Detainers for a term to expire at the pleasure of the governor, Rebecca Price of Huntsville (replacing Larry D. LeFlore of Huntsville who retired).

Appointed to the Texas State Board Examiners of Marriage and Family Therapists for a term to expire February 1, 2011, Edna Reyes-Wilson of El Paso (replacing Brenda VanAmburgh of Fort Worth whose term expired).

Rick Perry, Governor

TRD-200704928

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THE ATTORNEY GENERAL

The *Texas Register* publishes summaries of the following: Requests for Opinions, Opinions, Open Records Decisions.

An index to the full text of these documents is available from the Attorney General's Internet site http://www.oag.state.tx.us. Telephone: 512-936-1730. For information about pending requests for opinions, telephone 512-463-2110.

An Attorney General Opinion is a written interpretation of existing law. The Attorney General writes opinions as part of his responsibility to act as legal counsel for the State of Texas. Opinions are written only at the request of certain state officials. The Texas Government Code indicates to whom the Attorney General may provide a legal opinion. He may not write legal opinions for private individuals or for any officials other than those specified by statute. (Listing of authorized requestors: http://www.oag.state.tx.us/opinopen/opinhome.shtml.)

Request for Opinions

RQ-0632-GA

Requestor:

The Honorable Phil King

Chair, Committee on Regulated Industry

Texas House of Representatives

P.O. Box 2910

Austin, Texas 78768-2910

Re: Whether a proposed limitation on the use of overtime in the calculation of retirement benefits for vested employees of the City of Fort Worth contravenes article XVI, section 66 of the Texas Constitution (RQ-0632-GA)

Briefs requested by November 12, 2007

RQ-0633-GA

Requestor:

The Honorable Joe Driver

Chair, Committee on Law Enforcement

Texas House of Representatives

P.O. Box 2910

Austin, Texas 78768-2910

Re: Reimbursement of a fire fighter or police officer who is subpoenaed as a witness in a civil service hearing and testifies during his or her time off (RQ-0633-GA)

Briefs requested by November 12, 2007

RQ-0634-GA

Requestor:

Mr. Robert Scott

Commissioner of Education (Acting)

Texas Education Agency

1701 North Congress Avenue

Austin, Texas 78701-1494

Re: Whether a proposed rule of the State Board for Educator Certification that relates to certification eligibility of persons with criminal convictions is preempted by section 21.060 of the Education Code (RQ-0634-GA)

Briefs requested by November 15, 2007

RQ-0635-GA

Requestor:

Mr. Buddy Garcia, Chairman

Texas Commission on Environmental Quality

Post Office Box 13087

Austin, Texas 78711-3087

Re: Whether certain provisions of House Bill 3732, enacted by the 80th Legislature, restrict the rule-making power of the Texas Commission on Environmental Quality to pollution control property associated with advanced clean energy projects as defined in section 382.003 of the Health and Safety Code (RQ-0635-GA)

Briefs requested by November 15, 2007

For further information, please access the Web site at www.oag.state.tx.us or call the Opinion Committee at (512) 463-2110.

TRD-200704906
Stacey Napier
Deputy Attorney General
Office of the Attorney General
Filed: October 16, 2007

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EMERGENCY RULES

Emergency Rules include new rules, amendments to existing rules, and the repeals of existing rules. A state agency may adopt an emergency rule without prior notice or hearing if the agency finds that an imminent peril to the public health, safety, or welfare, or a requirement of state or federal law, requires adoption of a rule on fewer than 30 days' notice. An emergency rule may be effective for not longer than 120 days and may be renewed once for not longer than 60 days (Government Code, §2001.034). An emergency rule may be effective for not longer than 120 days and may be renewed once for not longer than 60 days. (Government Code, §2001.034).

TITLE 22. EXAMINING BOARDS

PART 23. TEXAS REAL ESTATE COMMISSION

CHAPTER 535. GENERAL PROVISIONS

SUBCHAPTER E. REQUIREMENTS FOR LICENSURE

22 TAC §535.51

The Texas Real Estate Commission (TREC) adopts on an emergency basis amendments to §535.51 concerning General Requirements and adopts by reference four revised forms. The amendments are adopted on an emergency basis to comply with new legislation that included amendments to Texas Occupations Code, Chapters 1101 and 1102, enacted during the 80 Legislative Session, Regular Session, by Senate Bill 914 and House Bill 1530. The effective date of SB 914 and HB 1530 is September 1, 2007. The emergency adoption of the amendments permits TREC to comply with the effective date required by both bills. The emergency amendments adopt by reference four revised forms to reflect late renewal fees for applicants for salesperson and broker license. The amendments to the rule adopting the forms by reference were adopted on an emergency basis at a TREC meeting on August 6, 2007 and published in the August 24, 2007, issue of the *Texas Register* (32 TexReg 5240). Those rules are withdrawn and replaced with the new amended rules; specifically, the new emergency rules change one of the forms to reflect an increased salesperson application fee as published in the August 24, 2007, issue of the *Texas Register* (32 TexReg 5240); typographical errors were corrected and formatting changes to the fee summaries were made on all 4 forms.

The emergency amendments to the rule are adopted under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to make and enforce all rules and regulations necessary for the performance of its duties and to establish standards of conduct and ethics for its licensees in keeping with the purpose and intent of the Act to insure compliance with the provisions of the Act.

The statutes affected by this emergency adoption are Texas Occupations Code, Chapters 1101 and 1102, and Senate Bill 914 and House Bill 1530, 80th Legislature, R.S. No other statute, code, or article is affected by the adopted amendments.

§535.51. General Requirements.

(a) - (d) (No change.)

(e) The commission adopts by reference the following forms approved by the commission which are published by and available from the Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188:

(1) [~~Effective June 1, 2004,~~] Application [~~application~~] for a Real Estate Broker License, TREC Form BL-8;

(2) [~~Effective September 1, 2004,~~] Application for a Real Estate Broker License by a Corporation, TREC Form BLC-5;

(3) Effective September 1, 2007, [~~Effective September 1, 2004,~~] Application [~~application~~] for Late Renewal of A Real Estate Broker License, TREC Form BLR-8 [~~7~~];

(4) Effective September 1, 2007, Application for Late Renewal of Real Estate Broker License [~~Privileges~~] by a Corporation, TREC Form BLRC-5 [~~4~~];

(5) Application for Real Estate Salesperson License, TREC Form SL-10;

(6) Effective September 1, 2007, Application for Late Renewal of Real Estate Salesperson License, TREC Form SLR-9 [~~8~~];

(7) Application for Moral Character Determination, TREC Form MCD-5;

(8) Application for Real Estate Broker License by a Limited Liability Company, TREC Form BLLLC-5;

(9) Application of Currently Licensed Real Estate Broker for Salesperson License, TREC Form BSL-5; and

(10) Effective September 1, 2007, Application for Late Renewal of a Real state Broker License by a Limited Liability Company, TREC Form BLRLLC-4 [~~3~~].

This agency hereby certifies that the emergency adoption has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on October 9, 2007.

TRD-200704829
Loretta R. DeHay
General Counsel and Assistant Administrator
Texas Real Estate Commission
Effective Date: September 1, 2007
Expiration Date: December 29, 2007
For further information, please call: (512) 465-3900

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SUBCHAPTER R. REAL ESTATE INSPECTORS

22 TAC §535.212

The Texas Real Estate Commission (TREC) adopts on an emergency basis amendments to §535.212 concerning Education and Experience for an Inspector License. Previous amendments to §535.212 were adopted on an emergency basis at a TREC meeting on August 6, 2007 and published in the August

24, 2007, issue of the *Texas Register* (32 TexReg 5244). The emergency amendments amend §535.212 as adopted on August 6, 2007. The amendments are adopted on an emergency basis to comply with revisions to Texas Occupations Code, Chapter 1102, enacted by House Bill 1530, 80th Legislative Session, Regular Session. The effective date of HB 1530 is September 1, 2007.

Section 1102.111(a), Texas Occupations Code, as amended by HB 1530, provides that, as of September 1, 2007, an applicant for a real estate and professional home inspector license must have both additional education and experience in lieu of the experience requirements under the traditional three-tier application process for a license. Immediately prior to September 1, the education component was required but the experience component was not. This legislative change to strengthen the licensing standards for real estate and professional inspectors entering the profession under the alternate licensing track authorized TREC to specify by rule the extent of these requirements, subject to express statutory limitations. In order to provide for rules to be in place when the new law took effect, TREC adopted an emergency rule and set the education and experience requirements at their statutory caps.

The adoption of the emergency amendments permits TREC to comply with the effective date required by the bills. The adoption of the emergency amendments also takes into consideration the concerns raised by individuals affected by the new rules that require both education and experience in lieu of the experience required under the traditional three-tier application process for a real estate and professional home inspector license. TREC has received correspondence from persons who were in the process of taking the required education courses prior to September 1, 2007, and were not aware that Chapter 1102 had been changed to require both education and experience under the alternative licensing method.

The emergency amendments to §535.212 require both education and experience in lieu of the experience required under the traditional three-tier application process to reflect new requirements under §1102.111, Texas Occupations Code. The amendments require an applicant under the alternate application process for a professional inspector license to provide proof of completion of 200 additional hours of education and either proof of completion of 120 hours of an experience training module, 120 hours of experience working with a licensed professional inspector, or evidence of 5 years of experience in a field directly related to home inspecting.

Under the rule, there are three ways for applicants who are other than actively practicing licensed or registered architects, professional engineers, or engineer-in-trainings to gain required experience. The "education model" experience alternative will provide for experience to be obtained under conditions where the hands-on experience is systematic in its coverage under closely supervised field instruction by an approved education provider. The "inspection experience" alternative will assure that the aspiring licensee gets actual home inspecting experience with a licensed professional inspector for a stated period. Lastly, the experience alternative assures that the applicant has experience in a field directly related to home inspecting. The applicant will be able to choose which method of alternate experience is best suited to the applicant's background and training.

The emergency amendments to §535.212 require an applicant under the alternate application process for a real estate inspector license to provide proof of completion of 30 additional hours of education and proof of either completion of 60 hours of an experience training module, 60 hours of experience working with a licensed professional inspector, or evidence of 3 years of experience in a field directly related to home inspecting.

If the applicant is an actively practicing licensed or registered architect, professional engineer, or engineer-in-training, the applicant meets the professional inspector education and experience requirement by actively practicing for 3 years and meets the real estate inspector education and experience requirement by actively practicing for 1 year.

If the applicant was enrolled in an education program with a significant experience component prior to September 1, 2007, the applicant meets the experience requirement in §1102.111(a), Texas Occupations Code. Not more than two persons may accompany a licensed professional inspector on inspections to meet the alternate experience component described in the amendments to §535.212.

All applicants under the alternative education and experience licensing method would be required to take the threshold education courses for a license and pass the relevant licensing examination.

The emergency amendments are adopted under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to make and enforce all rules and regulations necessary for the performance of its duties and to establish standards of conduct and ethics for its licensees in keeping with the purpose and intent of the Act to insure compliance with the provisions of the Act.

The statutes affected by this emergency adoption are Texas Occupations Code, Chapters 1101 and 1102, and Senate Bill 914 and House Bill 1530, 80th Legislature, R.S. No other statute, code, or article is affected by the adopted amendments.

§535.212. Education and Experience Requirements for an Inspector License.

(a) (No change.)

(b) Experience and additional education requirements.

(1) An applicant may substitute the following experience or additional education in lieu of the number of real estate inspections required by Chapter 1102, Texas Occupations Code and in lieu of the requirement that the applicant has previously been licensed for a specified time as an apprentice inspector or a real estate inspector:

(A) To meet the additional education and experience requirements in connection with an application for a license as a real estate inspector:

(i) Actively practicing licensed or registered architects, professional engineers, or engineer-in-trainings meet some of the education requirements by taking 8 hours in Standards of Practice/Legal/Ethics and 8 hours in Standard Report Form/Report Writing from an approved education provider. They meet the other education requirements by virtue of meeting the education requirements for obtaining and maintaining their licenses as architects or engineers. They meet the experience requirement through two years of active practice under their respective license or registration.

(ii) Persons other than those described in clasue (i) of this subparagraph may meet the education requirement by completing 30 additional education hours acceptable to the commission. The additional 30 education hours must include foundation systems, roof systems, framing, electrical systems, HVAC systems, plumbing, building enclosures, and appliances.

(iii) Persons other those described in clause (i) of this subparagraph may meet the experience requirement by either completing an approved experience training module of at least 60 hours from an approved education provider; accompanying a licensed professional inspector for at least 60 hours on actual inspections and related work and having that licensed professional inspector certify such attendance; or by having at least three years of personal experience in a field directly related to home inspecting, including but not limited to installing, servicing, repairing or maintaining the structural, mechanical and electrical systems found in improvements to real property. Documentation of experience must include two reference letters from persons other than the applicant who have personal knowledge of the applicant's occupation and work.

(B) To meet the additional education and experience requirements in connection with an application for a license as a professional inspector:

(i) Actively practicing licensed or registered architects, professional engineers, or engineer-in-trainings meet some of the education requirements by taking 8 hours in Standards of Practice/Legal/Ethics and 8 hours in Standard Report Form/Report Writing from an approved education provider. They meet the other education requirements by virtue of meeting the education requirements for obtaining and maintaining their licenses as architects or engineers. They meet the experience requirement through three years of active practice under their respective license or registration.

(ii) Persons other than those described in clause (i) of this subparagraph may meet the education requirement by completing 200 additional education hours acceptable to the commission. The additional 200 education hours must include 30 hours in Foundation Systems, 25 hours in Roof Systems, 30 hours in Framing, 25 hours in Electrical Systems, 25 hours in HVAC Systems, 25 hours in plumbing, 12 hours in Building Enclosure, 6 hours in Appliances, 8 hours in Standards of Practice/Legal/Ethics, 8 hours in Standard Report Form/Report Writing, and 6 hours of other approved courses.

(iii) Persons other those described in clause (i) of this subparagraph may meet the experience requirement by either completing an approved experience training module of at least 120 hours from an approved education provider; accompanying a licensed professional inspector for at least 120 hours on actual inspections and related work and having that licensed professional inspector certify such attendance; or by having at least five years of personal experience in a field directly related to home inspecting, including but not limited to installing, servicing, repairing or maintaining the structural, mechanical and electrical systems found in improvements to real property. Documentation of experience must include two reference letters from persons other than the applicant who have personal knowledge of the applicant's occupation and work.

(iv) Not more than two persons may accompany a licensed professional inspector on actual inspections to meet the experience requirement of Texas Occupations Code, §1102.111(a).

(C) Persons other than those described in subparagraphs (A)(i) and (B)(i) of this paragraph who, prior to September 1, 2007, were also enrolled in and attending an educational program that met the requirements of Texas Occupations Code, §1102.111 in effect prior to September 1, 2007, may meet the experience requirement by successfully completing that program if it includes in its curriculum applied teaching that includes an experience segment in a lab or simulator environment, actual on-site inspections, or a similar setting that provides direct experience with the inspection of those systems covered in the course and the use of the basic inspection-related tools. The education provider offering the program must confirm to commission staff, in writing, that the program includes such an experience segment. This subparagraph (C) of this paragraph expires automatically and may not be relied upon for any license application made after January 1, 2008.

~~[(A) For a real estate inspector license, the applicant must have completed at least 30 additional hours of core real estate inspection courses acceptable to the commission, with at least 10 hours of credit each for the structural, mechanical (including appliances, plumbing, and HVAC components) and electrical systems found in improvements to real property or the applicant must provide documentation satisfactory to the commission to establish that the person has been licensed or registered at least three years as an architect, professional engineer, or engineer-in-training, or has at least five years of personal experience inspecting, installing, servicing, repairing or maintaining each of the structural, mechanical and electrical systems found in improvements to real property. Documentation of experience must include two reference letters from persons other than the applicant who have personal knowledge of the applicant's occupation and work.]~~

~~[(B) For a professional inspector license, the applicant must have completed at least 320 additional hours of education acceptable to the commission. The additional 320 education hours must include 45 hours in Foundation Systems, 40 hours in Roof Systems, 45 hours in Framing, 40 hours in Electrical Systems, 40 hours in HVAC Systems, 40 hours in plumbing, 20 hours in Building Enclosure, 10 hours in Appliances, 15 hours in Standards of Practice/Legal/Ethics, 15 hours in Standard Report Form/Report Writing, and 10 hours of other approved courses. The applicant must also provide documentation satisfactory to the commission to establish that the person has been licensed or registered at least five years as an architect, professional engineer, or engineer-in-training, or has at least seven years of personal experience inspecting, installing, servicing, repairing or maintaining each of the structural, mechanical and electrical systems found in improvements to real property. Documentation of experience must include two reference letters from persons other than the applicant who have personal knowledge of the applicant's occupation and work.]~~

~~[(C) Effective January 1, 2005, for a professional inspector license, the applicant must have completed at least 320 additional hours of education acceptable to the commission. The additional 320 education hours must include 45 hours in Foundation Systems, 40 hours in Roof Systems, 45 hours in Framing, 40 hours in Electrical Systems, 40 hours in HVAC Systems, 40 hours in plumbing, 20 hours in Building Enclosure, 10 hours in Appliances, 15 hours in Standards of Practice/Legal/Ethics, 15 hours in Standard Report Form/Report Writing, and 10 hours of other approved courses or provide documentation satisfactory to the commission to establish that the person has been licensed or registered at least five years as an architect, professional engineer, or engineer-in-training, or has at least seven years of personal experience inspecting, installing, servicing, repairing or maintaining each of the structural, mechanical and electrical systems found in improvements to real property. Documentation of experience must include two reference letters from persons other than the applicant who have personal knowledge of the applicant's occupation and work.]~~

(2) (No change.)

This agency hereby certifies that the emergency adoption has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on October 9, 2007.

TRD-200704830

Loretta R. DeHay
General Counsel and Assistant Administrator
Texas Real Estate Commission
Effective Date: September 1, 2007
Expiration Date: December 29, 2007
For further information, please call: (512) 465-3900

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PROPOSED RULES

Proposed rules include new rules, amendments to existing rules, and repeals of existing rules. A state agency shall give at least 30 days' notice of its intention to adopt a rule before it adopts the rule. A state agency shall give all interested persons a reasonable opportunity to submit data, views, or arguments, orally or in writing (Government Code, Chapter 2001).

Symbols in proposed rule text. Proposed new language is indicated by underlined text. [~~Square brackets and strikethrough~~] indicate existing rule text that is proposed for deletion. "(No change)" indicates that existing rule text at this level will not be amended.

TITLE 16. ECONOMIC REGULATION

PART 1. RAILROAD COMMISSION OF TEXAS

CHAPTER 3. OIL AND GAS DIVISION

16 TAC §3.50, §3.80

The Railroad Commission of Texas (Commission) proposes to amend §3.50, relating to Enhanced Oil Recovery Projects--Approval and Certification for Tax Incentive, to incorporate changes made by House Bill (HB) 3732, 80th Legislature (2007), Regular Session, and to amend §3.80, relating to Commission Oil and Gas Forms, Applications, and Filing Requirements, to adopt a new form related to HB 3732 and to amend and delete other forms.

Section 9 of HB 3732 amends Chapter 202 of the Texas Tax Code, relating to Oil Production Tax) to add new §202.0545, relating to Tax Exemption for Enhanced Recovery Projects Using Anthropogenic Carbon Dioxide. In general, the bill provides a reduction in the tax rate on oil produced from enhanced recovery projects using anthropogenic carbon dioxide. These changes became effective September 1, 2007.

HB 3732 authorizes the Commission to issue a certification for a severance tax rate reduction on oil produced using anthropogenic carbon dioxide in an enhanced recovery project, if that carbon dioxide is to be sequestered in a reservoir productive of oil or natural gas, and when the Commission finds that there is a reasonable expectation that the operator's planned sequestration program will ensure that at least 99 percent of the carbon dioxide sequestered will remain sequestered for at least 1,000 years. The bill requires that the operator employ appropriately designed monitoring and verification measures for a period sufficient to demonstrate whether the sequestration program is performing as expected.

Until the later of the seventh anniversary of the date that the Comptroller of Public Accounts first approves an application for a tax rate reduction or the effective date of a final rule adopted by the Environmental Protection Agency regulating carbon dioxide as a pollutant, the producer of oil recovered through an enhanced oil recovery (EOR) project that qualifies under Texas Tax Code, §202.054, for the recovered oil tax rate provided by Texas Tax Code, §202.052(b), is entitled to an additional 50 percent reduction in that tax rate if in the recovery of the oil the EOR project uses carbon dioxide that: (1) is captured from an anthropogenic source in Texas; (2) would otherwise be released into the atmosphere as industrial emissions; (3) is measurable at the source of capture; and (4) is sequestered in one or more geological formations in this state following the EOR process. The tax reduction on oil is proportional to the percentage of anthropogenic carbon dioxide that satisfies these criteria.

To qualify for the tax rate reduction, the operator must apply for a certification from the Commission if carbon dioxide used in the project is to be sequestered in an oil or natural gas reservoir; the Texas Commission on Environmental Quality (TCEQ) if the carbon dioxide used in the project is to be sequestered in a geological formation other than an oil or natural gas reservoir; or both agencies if the carbon dioxide used in the project is to be sequestered in an oil or gas reservoir and a geological formation other than an oil or gas reservoir. Then, the operator must apply to the Comptroller of Public Accounts.

The agencies may issue a certification only if they find, based on substantial evidence, that there is a reasonable expectation that the operator's planned sequestration program will ensure that at least 99 percent of the carbon dioxide sequestered will remain sequestered for at least 1,000 years, and will include appropriately designed monitoring and verification measures that will be employed for a period sufficient to demonstrate whether the sequestration program is performing as expected. The operator does not qualify for the tax rate reduction if the operator's sequestration program or monitoring and verification measures differ substantially from the planned program.

HB 3732 requires that the Comptroller approve the application if the operator submits the certification(s) and the Comptroller determines that the oil is otherwise eligible. An operator may apply for a tax credit on oil produced over the year.

The Commission proposes to amend §3.50(a) to add a reference to Texas Tax Code, §202.0545, Tax Exemption for Enhanced Recovery Projects Using Anthropogenic Carbon Dioxide.

The Commission proposes to amend §3.50(c) to add a definition for anthropogenic carbon dioxide. The Commission proposes to define anthropogenic carbon dioxide to mean carbon dioxide produced as a result of human activities. Potential sources of relatively large quantities of anthropogenic carbon dioxide include ammonia plants, gas plants, and gasification plants. In subsection (h)(2)(B), the Commission proposes to add a reference to anthropogenic carbon dioxide.

The Commission proposes to add a new subsection (k), pertaining to the standards and procedures applicable to obtaining an additional tax reduction for an enhanced recovery project using anthropogenic carbon dioxide. Proposed new subsection (k)(1) states that, subject to the limitations provided by Texas Tax Code, §202.0545, until the later of the seventh anniversary of the date that the comptroller first approves an application for a tax rate reduction under this subsection or the effective date of a final rule adopted by the United States Environmental Protection Agency regulating carbon dioxide as a pollutant, the producer of oil recovered through an EOR project that qualifies under Texas

Tax Code, §202.054, for the recovered oil tax rate provided by Texas Tax Code, §202.052(b), is entitled to an additional 50 percent reduction in that tax rate if in the recovery of the oil the EOR project uses carbon dioxide that is captured from an anthropogenic source in this state; would otherwise be released into the atmosphere as industrial emissions; is measurable at the source of capture; and is sequestered in one or more geological formations in this state following the EOR process.

Proposed new subsection (k)(2) states that in the event that a portion of the carbon dioxide used in the EOR project is anthropogenic carbon dioxide that satisfies the criteria of paragraph (1) of subsection (k) and a portion of the carbon dioxide used in the project fails to satisfy the criteria of paragraph (1) because it is not anthropogenic, the tax reduction provided by paragraph (1) shall be reduced to reflect the proportion of the carbon dioxide used in the project that satisfies the criteria of paragraph (1).

Proposed new subsection (k)(3) states that, in order to qualify for the tax rate reduction, the operator must apply for a certification from the Railroad Commission of Texas, if carbon dioxide used in the project is to be sequestered in an oil or natural gas reservoir; and apply to the comptroller for the reduction and include with the application any information and documentation that the comptroller may require.

Proposed new subsection (k)(4) contains the application requirements. To qualify for the reduced recovered oil tax rate the operator must submit an application for approval on the appropriate form. All applications must be filed at the Commission's Austin Office, provide the Commission with any relevant information required to administer this subsection such as plats showing the proposed project area and all wells within the area, production and injection history, planned enhanced oil recovery procedures, and any other pertinent data.

Proposed new subsection (k)(5) states that the Commission may issue the certification for the reduced tax rate under this subsection only if the Commission finds that, based on substantial evidence, there is a reasonable expectation that the operator's planned sequestration program will ensure that at least 99 percent of the carbon dioxide will remain sequestered for at least 1,000 years, and the operator's planned sequestration program will include appropriately designed monitoring and verification measures that will be employed for a period sufficient to demonstrate whether the sequestration program is performing as expected.

Proposed new subsection (k)(6) states that the operator is responsible for making application to the Comptroller of Public Accounts for the additional tax rate reduction.

Proposed new subsection (k)(7) states that the tax rate reduction does not apply if the operator's sequestration program or monitoring and verification measures differ substantially from the planned program approved by the Commission, and that the operator will be required to refund the difference between the amount of the tax paid under this section and the amount that would have been imposed in the absence of this section.

Proposed new subsection (k)(8) provides that, in conjunction with the Annual Report required to be filed under §3.50(h), an operator must submit information concerning the operator's monitoring and verification measures results as proposed in the application for certification to demonstrate whether the sequestration program is performing as expected.

The Commission also proposes to amend §3.80, Commission Oil and Gas Forms, Applications, and Filing Requirements, to add a new form and amend or delete other forms. The Commission proposes to adopt a new Form H-12A, Application for Certification for Additional Tax Rate Reduction for Enhanced Recovery Projects Using Anthropogenic Carbon Dioxide. The proposed form requests information necessary for Commission staff to determine whether the proposed project meets the statutory requirements in Texas Tax Code, §202.0545. The proposed project must qualify for the tax rate reduction in Texas Tax Code, §202.054, before it can be considered for the additional tax rate reduction in Texas Tax Code, §202.0545; therefore, the proposed form requests the EOR project's certification number and date of certification for the tax rate reduction under Texas Tax Code, §202.054. If the project is new, the applicant must also submit Form H-12A with Form H-12, New or Expanded Enhanced Oil Recovery Project and Area Designation Approval Application. Items 6, 7, and 9 on the proposed Form H-12A request information to determine whether the proposed project meets the criteria included in Texas Tax Code, §202.0545. Item 8 of the proposed Form H-12A requests the percentage of injection fluid that is anthropogenic carbon dioxide, because the additional tax rate reduction is proportional to the percentage of anthropogenic carbon dioxide that satisfies the criteria. The Form H-12A must be signed by a person authorized to make the application and knowledgeable of the data and facts contained in the application.

The Commission also proposes to amend Form H-14, Enhanced Oil Recovery Reduced Tax Annual Report, to provide a space to report the annual injection volume of anthropogenic carbon dioxide.

The Commission proposes to amend Form P-5LC, Irrevocable Documentary Blanket Letter of Credit, to replace the reference to Uniform Customs and Practices (UCP) #500 with UCP #600, and to replace the revision date of 1993 with 2007. The revision from #500 to #600 was effective on July 1, 2007.

The Commission also proposes to revise the effective date indicated on Table 1 for Form P-13, Application of Landowner to Condition an Abandoned Well for Fresh Water Production, to correct the last revision date from 1979 to October 2004.

The Commission proposes to revise Form P-17, Application for Exception to Statewide Rules 26 and/or 27 (Commingling), and to delete from Table 1 Form P-17A, Interim Commingling/ Measurement Application Supplement. The Commission proposes to consolidate the Form P-17 for oil and gas in order to streamline the reporting process and facilitate internal processing. Proposed changes to the Form P-17 include clearer instructions and broader reporting options that allow an RRC identifier to be used when identifying commingled leases that are pending a lease number assignment. The proposed revised Form P-17 also includes an attachment page for ease of filing multiple leases on one commingling permit application. The proposed Form P-17 will require data in a format that is more compatible with the Commission's automated production reporting system, which will result in more efficient tracking of commingled production.

The Commission proposes to delete from Table 1 Form W-1X, Application for Future Re-Entry of Inactive Wellbore and 14(b)(2) Extension Permit, because this form is no longer necessary. The Commission proposes to amend Table 1 to delete the Franchise Tax Certification form. The 77th Texas Legislature (2001) repealed the statutory requirement for such certification.

These proposed form modifications may be viewed online at www.rrc.state.tx.us/rules/proposed.html.

Leslie Savage, Oil and Gas Division planner, has determined that for each year of the first five years the proposed amendments will be in effect, there will be some fiscal implications for state governments. For the first fiscal year that the amendments are effective, the Commission estimates a cost of approximately $28,500 for additional programming necessary to track the certified sequestration projects. For the first and each subsequent fiscal year that the additional severance tax rate reduction is available, the Commission will expend staff time reviewing and processing applications for the additional severance tax reduction certifications authorized by HB 3732, as well as monitoring sequestration activity to ensure that the actual program does not differ from the proposed program. The Commission estimates that there will be no fiscal impact to state or local government associated with the amendments proposed for §3.80.

The reduction of the severance tax rate as a result of sequestering anthropogenic carbon dioxide will affect state severance tax revenues at some point in the future; however, Commission staff is unable to predict the exact point and extent of that impact.

Ms. Savage has determined that for each year of the first five years that the amendments to §3.50 will be in effect, there will be a public benefit in the form of incentives to capture carbon dioxide that might otherwise escape into the atmosphere, to use it for enhanced recovery of the State's oil reserves, and subsequently to sequester that carbon dioxide in underground formations. Ms. Savage also has determined that for each year of the first five years that the amendments to §3.80 will be in effect, there will be a public benefit in the form of elimination of obsolete forms and language, as well as consolidation and clarification of Commission requirements related to commingling.

Texas Government Code, §2006.002, requires a state agency considering adoption of a rule that would have an adverse economic effect on small businesses or micro-businesses to reduce the effect if doing so is legal and feasible considering the purpose of the statutes under which the rule is to be adopted. Before adopting a rule that would have an adverse economic effect on small businesses or micro-businesses, a state agency must prepare a statement of the effect of the rule on small businesses and micro-businesses, which must include an analysis of the cost of compliance with the rule for small businesses and micro-businesses and a comparison of that cost with the cost of compliance for the largest businesses affected by the rule, using cost for each employee, cost for each hour of labor, or cost for each $100 of sales.

Because operators are not required to make filings with the Commission reporting number of employees, labor costs, amount of sales, or gross receipts, the Commission cannot determine whether a particular operator may be a small business or a micro-business. However, the Commission has determined that it is likely that some eligible operators would meet the definitions of these terms in Texas Government Code, §2006.001.

Ms. Savage has determined that it is not possible to calculate that the cost of compliance with the proposed amendments to §3.50 for individual, small business, or micro-business operators that would be entitled to file for high cost gas tax incentives. The statutory changes upon which the amendments to §3.50 are based make no distinction based on an entity's status as an individual, small business, or micro-business. Because the requirements enacted by HB 3732 are statutory, the Commission does not have authority to change the requirements or to create exceptions to them. There may be a cost of compliance for individuals, small businesses, or micro-businesses; however, application for the additional severance tax reduction is optional and Commission staff assumes that these entities would not apply for the certification if the cost of applying for the certification would exceed the economic benefit of the tax reduction.

The Commission assumes further that, during a given year, at least one operator filing under §3.80 is an individual, small business, or micro-business. Ms. Savage has determined that the cost of compliance with the proposed amendments to §3.80 for individual, small business, or micro-business operators will be negligible. The Commission also anticipates that the proposed amendments to §3.80 will have no costs of compliance for such entities, because the Commission proposes to adopt a new form related to the tax rate reduction, amend a form to provide a place to report information related to the tax rate reduction, delete unnecessary forms, correct an effective date on Form P-13, correct a reference in Form P-5 LC, and consolidate the forms used for commingled oil or gas into one Form P-17.

Comments on the proposed amendments as well as the proposed conforming modifications to Commission forms may be submitted to Rules Coordinator, Office of General Counsel, Railroad Commission of Texas, P.O. Box 12967, Austin, Texas 78711-2967; online at www.rrc.state.tx.us/rules/commentform.html; or by electronic mail to rulescoordinator@rrc.state.tx.us. Comments will be accepted until 5:00 p.m. on Monday, November 26, 2007, which is 31 days after publication in the *Texas Register*. The Commission finds that this comment period is reasonable because the proposal as well as an online comment form will be available on the Commission's web site no later than the day after the open meeting at which the Commission approves publication of the proposal, giving interested persons over two additional weeks to review, analyze, draft, and submit comments. The Commission encourages all interested persons to submit comments no later than the deadline. The Commission cannot guarantee that comments submitted after the deadline will be considered. For further information, call Ms. Savage (512) 463-7308. The status of Commission rulemakings in progress is available at www.rrc.state.tx.us/rules/proposed.html.

The Commission proposes the amendments to §3.50 and §3.80 to incorporate the changes made by HB 3732, 80th Legislature (2007), Regular Session. These changes are made pursuant to Texas Natural Resources Code, §81.051 and §81.052, which provide the Commission with jurisdiction over all persons owning or engaged in drilling or operating oil or gas wells and persons owning or operating pipelines in Texas and the authority to adopt all necessary rules for governing and regulating persons and their operations under Commission jurisdiction; Texas Natural Resources Code §§85.042, 85.202, 86.041, and 86.042, which require the Commission to adopt rules to control waste of oil and gas; and Texas Tax Code, §202.0545, relating to Tax Exemption for Enhanced Recovery Projects Using Anthropogenic Carbon Dioxide.

Statutory authority: Texas Natural Resources Code, §§81.051, 81.052, 85.024, 85.202, 86.041, and 86.042; and Texas Tax Code, §202.0545.

Cross-reference to statute: Texas Natural Resources Code, §§81.051, 81.052, 85.042, 85.202, 86.041, and 86.042; and Texas Tax Code, §202.0545.

Issued in Austin, Texas, on October 9, 2007.

§3.50. Enhanced Oil Recovery Projects--Approval and Certification for Tax Incentive.

(a) Purpose. The purpose of this section is to provide a procedure by which an operator can obtain Railroad Commission approval and certification of enhanced oil recovery (EOR) projects pursuant to Texas [~~the~~] Tax Code, [~~Title 2, Chapter 202, Subchapter B,~~] §202.052, [~~and~~] §202.054, and §202.0545.

(b) (No change.)

(c) Definitions. The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.

(1) (No change.)

(2) Anthropogenic carbon dioxide--Carbon dioxide produced as a result of human activities.

(3) [~~(2)~~] Commission--The Railroad Commission of Texas.

(4) [~~(3)~~] Commission representative--A commission employee authorized to act for the commission. Any authority given to a commission representative is also retained by the commission. Any action taken by the commission representative is subject to review by the commission.

(5) [~~(4)~~] Comptroller--The Comptroller of Public Accounts.

(6) [~~(5)~~] Enhanced oil recovery project (EOR)--The use of any process for the displacement of oil from the reservoir other than primary recovery and includes the use of an immiscible, miscible, chemical, thermal, or biological process. This term does not include pressure maintenance or water disposal projects.

(7) [~~(6)~~] Existing enhanced recovery project--An EOR project that has begun active operation but was not approved by the Commission as a new EOR project.

(8) [~~(7)~~] Expanded enhanced recovery project or expansion--The addition of injection and producing wells, the change of injection pattern, or other commission approved operating changes to an existing enhanced oil recovery project that will result in the recovery of oil that would not otherwise be recovered.

(9) [~~(8)~~] Fluid injection--Injection through an injection well of a fluid (liquid or gaseous) into a producing formation as part of an EOR project.

(10) [~~(9)~~] Incremental production--The volume of oil produced by an expanded enhanced recovery project in excess of the production decline rate established under conditions before expansion of an existing enhanced recovery project.

(11) [~~(10)~~] Oil recovery from an enhanced recovery project--The oil produced from the designated area the commission certifies to be affected by the project.

(12) [~~(11)~~] Operator--The person recognized by the commission as being responsible for the actual physical operation of an EOR project and the wells associated with the EOR project.

(13) [~~(12)~~] Positive production response--Occurs when the rate of oil production from wells within the designated area affected by an EOR project is greater than the rate that would have occurred without the project.

(14) [~~(13)~~] Pressure maintenance--The injection of fluid into the reservoir for the purpose of maintaining the reservoir pressure at or near the bubble point or other critical pressure wherein fluid injection volumes are not sufficient to refill existing reservoir voidage in the approved project area and displace oil that would not be displaced by primary recovery operations.

(15) [~~(14)~~] Primary recovery--The displacement of oil from the reservoir into the wellbore(s) by means of the natural pressure of the oil reservoir, including artificial lift.

(16) [~~(15)~~] Production decline rate--The projected future oil production from a project area as extrapolated by a method approved by the commission.

(17) [~~(16)~~] Recovered oil tax rate--The tax rate provided by the Tax Code, §202.052(b).

(18) [~~(17)~~] Secondary recovery project--An enhanced recovery project that is not a tertiary recovery project.

(19) [~~(18)~~] Termination--Occurs when the approved fluid injection program associated with an EOR project stops or is discontinued.

(20) [~~(19)~~] Tertiary recovery project--An EOR project using a tertiary recovery method (as defined in the federal June 1979 energy regulations referred to in the Internal Revenue Code of 1986, §4993, or approved by the United States secretary of the treasury for purposes of administering the Internal Revenue Code of 1986, §4993, without regard to whether that section remains in effect) including those listed as follows:

(A) Alkaline (or caustic) flooding--An augmented waterflooding technique in which the water is made chemically basic as a result of the addition of alkali metals.

(B) Carbon dioxide augmented waterflooding--Injection of carbonated water, or water and carbon dioxide, to increase waterflood efficiency.

(C) Cyclic steam injection--The alternating injection of steam and production of oil with condensed steam from the same well or wells.

(D) Immiscible carbon dioxide displacement--Injection of carbon dioxide into an oil reservoir to effect oil displacement under conditions in which miscibility with reservoir oil is not obtained.

(E) In situ combustion--Combustion of oil in the reservoir, sustained by continuous air injection, to displace unburned oil toward producing wells.

(F) Microemulsion, or micellar/emulsion, flooding--An augmented waterflooding technique in which a surfactant system is injected in order to enhance oil displacement toward producing wells. A surfactant system normally includes a surfactant, hydrocarbon, cosurfactant, an electrolyte and water, and polymers for mobility control.

(G) Miscible fluid displacement--An oil displacement process in which gas or alcohol is injected into an oil reservoir, at pressure levels such that the injected gas or alcohol and reservoir oil are miscible. The process may include the concurrent, alternating, or subsequent injection of water. The injected gas may be natural gas, enriched natural gas, a liquefied petroleum gas slug driven by natural gas, carbon dioxide, nitrogen, or flue gas. Gas cycling, i.e., gas injection into gas condensate reservoirs, is not a miscible fluid displacement technique nor a tertiary enhanced recovery technique within the meaning of this section.

(H) Polymer augmented waterflooding--Augmented waterflooding in which organic polymers are injected with the water to improve a real and vertical sweep efficiency.

(I) Steam drive injection--The continuous injection of steam into one set of wells (injection wells) or other injection source to effect oil displacement toward and production from a second set of wells (production wells).

(21) [~~(20)~~] Water disposal project--The injection of produced water into the reservoir for the purpose of disposing of the produced water wherein the water injection volumes are not sufficient to refill existing reservoir voidage in the approved project area and displace oil that would not be displaced by primary recovery operations.

(d) - (g) (No change.)

(h) Annual reporting.

(1) (No change.)

(2) The report shall contain the following:

(A) (No change.)

(B) monthly volume of injected fluid(s) and anthropogenic carbon dioxide;

(C) - (F) (No change.)

(i) - (j) (No change.)

(k) Additional tax rate reduction for enhanced recovery projects using anthropogenic carbon dioxide.

(1) Subject to the limitations provided by Texas Tax Code, §202.0545, until the later of the seventh anniversary of the date that the Comptroller of Public Accounts first approves an application for a tax rate reduction under this subsection or the effective date of a final rule adopted by the United States Environmental Protection Agency regulating carbon dioxide as a pollutant, the producer of oil recovered through an EOR project that qualifies under Texas Tax Code, §202.054, for the recovered oil tax rate provided by Texas Tax Code, §202.052(b), is entitled to an additional 50 percent reduction in that tax rate if in the recovery of the oil the EOR project uses carbon dioxide that:

(A) is captured from an anthropogenic source in this state;

(B) would otherwise be released into the atmosphere as industrial emissions;

(C) is measurable at the source of capture; and

(D) is sequestered in one or more geological formations in this state following the EOR process.

(2) In the event that a portion of the carbon dioxide used in the EOR project is anthropogenic carbon dioxide that satisfies the criteria of paragraph (1) of this subsection and a portion of the carbon dioxide used in the project fails to satisfy the criteria of paragraph (1) of this subsection because it is not anthropogenic, the tax reduction provided by paragraph (1) of this subsection shall be reduced to reflect the proportion of the carbon dioxide used in the project that satisfies the criteria of paragraph (1) of this subsection.

(3) To qualify for the tax rate reduction under this subsection, the operator shall:

(A) apply for a certification from the Commission if carbon dioxide used in the project is to be sequestered in an oil or natural gas reservoir; and

(B) apply to the Comptroller of Public Accounts for the reduction and include with the application any information and documentation that the comptroller may require.

(4) To qualify for the additional reduced recovered oil tax rate under this subsection the operator shall:

(A) submit an application for certification to the Commission's Austin Office for approval on the appropriate form that is executed and certified by a person having knowledge of the facts entered on the form;

(B) provide the Commission with:

(i) plats showing the proposed project area and all wells within the area;

(ii) production and injection history;

(iii) planned enhanced oil recovery procedures;

(iv) information to demonstrate that the carbon dioxide to be injected is anthropogenic and a description of the method(s) of capturing and measuring the captured carbon dioxide at the source;

(v) planned monitoring and verification measures that will be employed to demonstrate that the sequestration program is performing as expected; and

(vi) any other pertinent information requested by the Commission.

(5) The Commission may issue the certification for the reduced tax rate under this subsection only if the Commission finds that, based on substantial evidence, there is a reasonable expectation that:

(A) the operator's planned sequestration program will ensure that at least 99 percent of the carbon dioxide sequestered will remain sequestered for at least 1,000 years; and

(B) the operator's planned sequestration program includes appropriately designed monitoring and verification measures that will be employed for a period sufficient to demonstrate whether the sequestration program is performing as expected.

(6) The operator is responsible for making application to the Comptroller of Public Accounts for the additional tax rate reduction.

(7) The additional tax rate reduction under this subsection does not apply and the operator will be required to repay the amount of tax that would have been imposed in the absence of this subsection if the operator's sequestration program or the operator's monitoring and verification measures differ substantially from the planned program approved by the Commission.

(8) In conjunction with the Annual Report required to be filed under subsection (h) of this section, an operator shall submit information concerning the operator's monitoring and verification measures results as proposed in the application for certification to demonstrate whether the sequestration program is performing as expected.

§3.80. Commission Oil and Gas Forms, Applications, and Filing Requirements.

(a) Forms. Forms required to be filed at the Commission shall be those prescribed by the Commission as listed in Table 1 of this subsection. A complete set of all Commission forms listed on Table 1 required to be filed at the Commission shall be kept by the Commission secretary and posted on the Commission's web site. Notice of any new or amended forms shall be issued by the Commission. For any required or discretionary filing, an organization may either file the prescribed form on paper or use any electronic filing process in accordance with subsections (e) or (f) of this section, as applicable. The Commission may at its discretion accept an earlier version of a prescribed form, provided that it contains all required information and meets the requirements of subsection (e)(3) of this section.

Figure: 16 TAC §3.80(a)

(b) - (f) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on October 9, 2007.

TRD-200704798
Mary Ross McDonald
Managing Director
Railroad Commission of Texas
Earliest possible date of adoption: November 25, 2007
For further information, please call: (512) 475-1295

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CHAPTER 8. PIPELINE SAFETY REGULATIONS

The Railroad Commission of Texas (Commission) proposes amendments to §§8.1, 8.5, 8.101, and 8.115 and new §8.135, relating to General Applicability and Standards, Definitions, Pipeline Integrity Assessment and Management Plans for Natural Gas and Hazardous Liquids Pipelines, New Construction Commencement Report, and Penalty Guidelines for Pipeline Safety Violations; amendments to §§8.203, 8.205, 8.210, 8.215, 8.230, and 8.235, relating to Supplemental Regulations, Written Procedure for Handling Natural Gas Leak Complaints, Reports, Odorization of Gas, School Piping Testing, and Natural Gas Pipelines Public Education and Liaison; and amendments to §§8.301, 8.305, 8.310, and 8.315, relating to Required Records and Reporting, Corrosion Control Requirements, Hazardous Liquids and Carbon Dioxide Pipelines Public Education and Liaison, and Hazardous Liquids and Carbon Dioxide Pipelines or Pipeline Facilities Located Within 1,000 Feet of a Public School Building or Facility.

The Commission proposes the amendments and new rule to update the adoption by reference of federal pipeline safety provisions and citations, to address new risk management initiatives for the Commission's pipeline safety evaluation program, and to remove outdated or duplicative rule requirements.

In §8.1(a)(1)(A), the Commission proposes to remove the word "natural" and to add a new subparagraph (B) to address onshore pipelines and gathering and production facilities. In §8.1(b), the Commission changes the effective date from July 1, 2005, to August 16, 2007, to reflect a new date for the adoption by reference of federal pipeline safety statutes and proposes new wording in paragraphs (3) and (4) to add references to 49 CFR Part 40 and to another Commission rule, §3.70, relating to Pipeline Permits Required.

The Commission proposes the amendments in §8.1(b) to update the minimum safety standards and to adopt by reference the United States Department of Transportation's (USDOT) pipeline safety standards found in 49 U.S.C. §§60101, *et seq.*; 49 Code of Federal Regulations (CFR) Part 191, Transportation of Natural and Other Gas by Pipeline; Annual Reports, Incident Reports, and Safety-Related Condition Reports; 49 CFR Part 192, Transportation of Natural and Other Gas by Pipeline: Minimum Federal Safety Standards; 49 CFR Part 193, Liquefied Natural Gas Facilities: Federal Safety Standards; 49 U.S.C. §§60101, *et seq.*; 49 CFR Part 195, Transportation of Hazardous Liquids by Pipeline; and 49 CFR Part 199, Drug and Alcohol Testing. The current rule adopts the federal pipeline safety standards as of July 1, 2005; the proposed amendment will show this date as August 16, 2007. The federal safety rule amendments that will be captured are summarized in the following paragraphs.

USDOT's Amendment No. 192-101(102) and 195-85(86), published at 70 Federal Register (FR) 61571, addressed current regulations governing integrity management of gas transmission lines where an operator using direct assessment to evaluate corrosion risks must carry out the direct assessment according to PHMSA standards. In response to a statutory directive, the final rule prescribes similar standards operators must meet when they use direct assessment on certain other onshore gas, hazardous liquid, and carbon dioxide pipelines. PHMSA stated that broader application of direct assessment standards will enhance public confidence in the use of direct assessment to assure pipeline safety. The final rule took effect November 25, 2005.

USDOT's Amendment No. 192-102, published at 71 FR 13289, adopted a consensus standard to distinguish onshore gathering lines from other gas pipelines and from production operations. In addition, it established safety rules for certain onshore gathering lines in rural areas and revised current rules for certain onshore gathering lines in nonrural areas. Operators will use a new risk-based approach to determine which onshore gathering lines are subject to PHMSA's gas pipeline safety rules and which of these rules the lines must meet. PHMSA intended the action to reduce disagreements over classifications of onshore gathering lines, increase public confidence in the safety of onshore gathering lines, and provide safety rules consistent with the risks of onshore gathering lines. The final rule took effect April 14, 2006.

Amendment Nos. 192-103, 193-19, and 195-86, published at 71 FR 33402, updated the pipeline safety regulations to incorporate by reference all or parts of new editions of voluntary consensus technical standards to enable pipeline operators to utilize current technology, materials, and practices. The final rule took effect July 10, 2006.

Docket OST-2007-26828, published at 72 FR 1298, was an interim final rule regarding the National Highway Transportation Safety Administration's (NHTSA's) recently approved new breath tube alcohol screening device which will qualify for use in DOT agency-regulated testing once it appears on NHTSA's conforming products list. The interim final rule will provide procedure for use of the new device and remove procedures for a previously approved breath tube alcohol screening device which is no longer being manufactured. The interim final rule took effect January 11, 2007.

Amendment Nos. 192-103 and 195-86, published at 72 FR 4655, addressed PHMSA's amendment of a final rule published in the Federal Register on June 9, 2006, which updated the pipeline safety regulations to incorporate by reference all or parts of new editions of voluntary consensus technical standards to enable pipeline operators to utilize current technology, materials, and practices. The final rule took effect March 5, 2007.

Docket No. PHMSA-2005-22642, published at 72 FR 20055, concerned a final rule requiring operators to use design and construction features in new and replaced gas transmission pipelines to reduce the risk of internal corrosion. The design and construction features required by the rule will reduce the risk of internal corrosion and related pipeline failures by reducing the potential for accumulation of liquids and facilitating operation

and maintenance practices that address internal corrosion. The final rule took effect May 23, 2007.

Amendment Nos. 192-104 and 195-87, published at 72 FR 39012, modified the integrity management regulations for hazardous liquid and natural gas transmission pipelines. The modifications included adding an eight-month window to the period for reassessing hazardous liquid pipelines; modifying notification requirements for operators of hazardous liquid and natural gas pipelines; repealing a requirement for gas operators to notify local authorities; and allowing alternatives in calculating pressure reduction when making an immediate repair on a hazardous liquid pipeline. The action was intended to improve pipeline safety by clarifying the integrity management regulations and providing operators with increased flexibility in implementing their integrity management programs. The final rule was effective August 16, 2007.

Proposed amendments in §8.5(18), (24), and (28) add references to 49 CFR Part 40, clarify the definition of master metered system and add a reference to onshore pipeline, gathering, and production facilities to the definition of "transportation of gas."

In §8.101(b), the Commission proposes to remove the word "gathering" from the description of intrastate transmission lines; a similar change is also proposed in the title of Table 1 in subsection (b)(2).

The Commission proposes new wording in §8.115 to add a reference to Form PS-48 and describe requirements for new construction reports.

The Commission proposes new §8.135 to move the penalty guidelines for pipeline safety violations from Subchapter C, which applies to requirements for natural gas pipelines only, to Subchapter B, so that the guidelines will apply to all pipelines. The text of the rule is the same as §8.245, which is proposed for repeal in a concurrent proposal. The changes are found in two of the tables. These changes mean that penalty provisions for violations of the federal and Commission rules for hazardous liquids and carbon dioxide pipelines and specific provisions for operator qualification and integrity management on both natural gas and liquids pipelines will be included in the rule.

In §8.203, the Commission proposes to update references to federal statutes that have been changed and with which operators already must comply.

The Commission proposes clarifying wording in §8.205 to state that supervisory review of leak complaints must be completed and documented by 10:00 a.m. each day for calls received by midnight on the previous day.

In §8.210(a)(1), the Commission adds a reference to 49 CFR Part 192.3 and deletes some specific wording that is now covered by Part 192.3. In paragraph (3), proposed to be renumbered to paragraph (2), the Commission adds new subparagraphs (F) and (G) to require including the phone number of the operator's on-site person and estimated property damage, including cost of gas lost, of the operator, others, or both. Redesignated subparagraph (H) includes new wording to state that ignition, explosion, rerouting of traffic, evacuation of any building, and media interest are considered significant facts. In paragraph (3), the Commission adds a reference to 49 CFR Part 191 and adds new wording to describe Department of Transportation reports.

Section 8.210(b)(1) includes a proposed addition of the word "intrastate" for systems which must file pipeline safety annual reports.

A new subsection (e) is proposed to be added to require natural gas operators to submit on a semi-annual basis information regarding repaired leaks on their pipeline system as well as unrepaired leaks. Each operator will be required to submit a summary of repaired leaks on a form created by the Safety Division that describes the leak and the method of repair. A second report will also be required that will list the number of unrepaired leaks on the pipeline system. Each of the reports will be submitted online into the Commission's Pipeline Safety Integrity system on June 30 and December 31 of each calendar year.

In §8.215(a)(3), the Commission proposes to add that gas odorization must be verified by the supplier. In subsection (b), the Commission proposes that commercially available odorization equipment must be used and proposes to delete references to shop-made equipment.

In subsection (c), the Commission proposes that commercially available malodorants must be used and changes the reference from 1.0% or less by volume to one-fifth of the lower explosive limit. In subsection (d)(2), the Commission clarifies that malodorant tests must be done at intervals not exceeding 15 months, but at least once each calendar year; a similar change is proposed in subsection (e)(1) for malodorant concentration tests.

The Commission proposes clarifications in §8.230(c)(1) and (2); new subparagraph (A) is proposed to state that school facility pipe testing includes all gas piping from the outlet of the purchase meter to each inlet valve of each appliance.

In §8.235, the Commission proposes clarifying wording to state that liaison activities must be conducted at intervals not exceeding 15 months, but at least once each calendar year, and in subsection (e), to add a specific date of January 15 of each even-numbered year for certain information to be filed.

The Commission proposes to clarify §8.301(a)(1)(A) with new wording in clauses (vi), (vii), and (viii) to include the telephone number of the operator; the operator's on-site person; and to specify that ignition, explosion, rerouting of traffic, evacuation of any building, and media interest are considered significant facts. In subparagraph (B), the Commission proposes clarifying wording concerning reports submitted to the Department of Transportation. In paragraph (2)(A) and (B), the Commission adds the Commission's emergency telephone number and a reference to the Department of Transportation reports.

In subsection (b), the Commission proposes to add that each operator must file an annual report for its intrastate systems located in Texas in the same manner as required by 49 CFR Part 195 using forms supplied by the Department of Transportation. The Commission proposes new subsection (c) concerning safety-related condition reports as specified in 49 CFR 195.

The Commission proposes to delete from §8.305 the requirement for atmospheric corrosion control and to change the requirements for cathodic protection test stations. The Commission also proposes to delete some wording from the monitoring and inspection requirement in current paragraph (5), proposed to be renumbered as paragraph (4).

In §8.310(a), the Commission proposes to add wording that liaison activities must be conducted at intervals not exceeding 15 months, but at least once each calendar year.

Finally, in §8.315(c), the Commission proposes to clarify that pipeline owners and operators must file certain information on January 15 of each odd-numbered year.

Mary McDaniel, P.E., Director, Safety Division, has determined that, for each of the first five years the proposed new rules will be in effect, there will be no fiscal implications for state government. There may be fiscal implications for local governments that operate natural gas distribution systems, which would be similar to those for operators of similarly-sized investor-owned distribution systems. Some record-keeping requirements are proposed to be removed from the rules; in addition, the Commission proposes to reduce the number of incident reports that will need to be telephonically reported to the Commission. There will, however, be an increased cost of compliance for natural gas operators, both municipally-owned and investor-owned, for the proposal to require the semi-annual reporting of identified and repaired leaks in their pipeline systems. Ms. McDaniel anticipates that the costs will vary by operator depending on the data collection process currently used by each natural gas operator. Many of the data items requested are already tracked by operators and the associated costs will be the tabulation of their data; while others may need to add data collection fields in order to provide the requested information.

For a municipally-owned distribution system, Ms. McDaniel anticipates that the fiscal implications will be minimal. For example, one city last year included on its DOT annual report a total of seven leaks that were eliminated during the year. The Commission's proposal would require the reporting of additional information on the type of pipe, type of soil, leak repair method, and more detail on the cause of each leak. Most operators already use the Commission's leak repair reporting form or a modified version of it. For this municipally-owned system, the additional fiscal implications would arise from having to compile the additional information on system leaks and repairs and reporting it online. Ms. McDaniel estimates additional costs of no more than $100.

Ms. McDaniel has determined that, for each year of the first five years that the proposed amendments and new rule will be in effect, the primary public benefit will be accurate reference to federal pipeline safety standards enforced by the Commission and an increased level of safety for the pipeline systems by the identification of additional risk factors. In addition, the amendments and new rule are expected to provide enhanced public safety and increased awareness of safety requirements in the transportation of natural gas, carbon dioxide, and hazardous liquids because the rules will be correctly stated.

Ms. McDaniel has also developed the following analysis of the probable economic cost to persons required to comply with the proposed new rules for each year of the first five years that they will be in effect, as well as the analysis required by Texas Government Code, §2006.002. That statute requires a state agency considering adoption of a rule that would have an adverse economic effect on small businesses or micro-businesses to reduce the effect if doing so is legal and feasible considering the purpose of the statutes under which the rule is to be adopted. Before adopting a rule that would have an adverse economic effect on small businesses, a state agency must prepare a statement of the effect of the rule on small businesses, which must include an analysis of the cost of compliance with the rule for small businesses and a comparison of that cost with the cost of compliance for the largest businesses affected by the rule, using cost for each employee, cost for each hour of labor, or cost for each $100 of sales. The statute defines "small business" as a legal entity, including a corporation, partnership, or sole proprietorship, that is formed for the purpose of making a profit, is independently owned and operated, and has fewer than 100 employees or less than $1 million in annual gross receipts. A "micro-business" is a legal entity, including a corporation, partnership, or sole proprietorship, that is formed for the purpose of making a profit, is independently owned and operated, and has not more than 20 employees. A sole proprietorship is assumed to consist of an individual owner who is the only employee. The following analyses are based on the assumption that the owner of a sole proprietorship is the only employee; a micro-business has five employees; a small business has 50 employees; and a large business has 1,000 employees. Because the Commission does not collect from entities within the Commission's pipeline safety jurisdiction any information about their labor costs or their sales revenues, the comparisons of the cost of compliance and the impact on small businesses and micro-businesses are stated as the cost per employee, based on these stated assumptions.

With respect to compliance with proposed new leak and leak repair reporting requirements in §8.210(e), the following assumptions apply. The hourly cost for an employee is based on information from the Texas Workforce Commission. For 2005, the average hourly wage for experienced workers in the oil and gas extraction industry was $44. Currently, all operators must repair leaks and keep data about the leaks they report. The costs for the largest companies (1,000 employees) will not be very much, if any, because they already record all of this information. Some operators have no leaks; those operators will experience no increased cost of compliance. An operator that repairs 3,000 leaks on a large system might experience up to $5,000 in computer programming costs to sort data for reporting purposes.

The smaller operators may need to change their forms to include more information about the leaks they repair, but the Commission is developing a form to be provided to operators. Ms. McDaniel estimates that reporting the additional data may take an additional ten minutes per leak reported. There will be additional time needed to compile the information.

The following table shows a comparison of the cost per employee under various assumptions regarding compliance with the proposed new leak and leak repair reporting requirements in §8.210(e):

Figure: 16 TAC Chapter 8 - Preamble

The Commission anticipates that there will be no additional cost to individuals, small businesses, or micro-businesses of complying with the proposed amendments to §8.1, which simply change the date as of which the Commission has adopted by reference the federal pipeline safety rules. Texas pipelines are already required to comply with the federal rules. Under 49 U.S.C. §§60101, *et seq.*, the Commission is authorized to enforce pipeline safety laws so long as the state's scheme of regulation is as strict as or stricter than the federal system. In order to be considered "as strict as or stricter than" the federal scheme of regulation, the state must adopt every federal rule; there are no exceptions for rules of limited application. Therefore, even though the rules already apply in Texas, the Commission must also adopt the rules for its own system. Finally, the Commission anticipates that there will be no additional costs to individuals, small businesses, or micro-businesses of complying with proposed new §8.135, which applies to pipeline operators against whom enforcement actions are brought for violations of pipeline safety rules and is a summary and expla-

nation of current statutory provisions and Commission practice with respect to requesting, recommending, and determining penalty amounts for pipeline safety violations.

Comments on the proposal may be submitted to Rules Coordinator, Office of General Counsel, Railroad Commission of Texas, P.O. Box 12967, Austin, Texas 78711-2967; online at www.rrc.state.tx.us/rules/commentform.html; or by electronic mail to rulescoordinator@rrc.state.tx.us. Comments will be accepted until 5:00 p.m. on Monday, November 26, 2007, which is 31 days after publication in the *Texas Register*. The Commission finds that this comment period is reasonable because the proposal as well as an online comment form will be available on the Commission's web site no later than the day after the open meeting at which the Commission approves publication of the proposal, giving interested persons over two additional weeks to review, analyze, draft, and submit comments. The Commission encourages all interested persons to submit comments no later than the deadline. The Commission cannot guarantee that comments submitted after the deadline will be considered. For further information, call Ms. McDaniel at (512) 463-7166. The status of Commission rulemakings in progress is available at www.rrc.state.tx.us/rules/proposed.html.

SUBCHAPTER A. GENERAL REQUIREMENTS AND DEFINITIONS

16 TAC §8.1, §8.5

The Commission proposes the amendments under Texas Natural Resources Code, §81.051 and §81.052, which give the Commission jurisdiction over all common carrier pipelines in Texas, persons owning or operating pipelines in Texas and their pipelines and oil and gas wells, and authorize the Commission to adopt all necessary rules for governing and regulating persons and their operations under the jurisdiction of the Commission as set forth in §81.051, including such rules as the Commission may consider necessary and appropriate to implement state responsibility under any federal law or rules governing such persons and their operations; Texas Natural Resources Code, §81.0531, which requires the Commission to adopt by rule guidelines to be used in determining the amount of the penalty for a violation of a provision of Title 3 of the Texas Natural Resources Code, or a rule, order, license, permit, or certificate that relates to pipeline safety; Texas Natural Resources Code, §§117.001 - 117.102, which give the Commission jurisdiction over all pipeline transportation of hazardous liquids or carbon dioxide and over all hazardous liquid or carbon dioxide pipeline facilities as provided by 49 U.S.C. §§60101, *et seq.*; and Texas Utilities Code, §§121.201 - 121.210, which authorize the Commission to adopt safety standards and practices applicable to the transportation of gas and to associated pipeline facilities within Texas to the maximum degree permissible under, and to take any other requisite action in accordance with, 49 United States Code Annotated, §§60101, *et seq.*; §121.251 and §121.252, which authorize the Commission to regulate the use of malodorants in natural gas; and §§121.5005 - 121.507, which give the Commission authority to regulate the testing of natural gas piping systems in school facilities.

Texas Natural Resources Code, §§81.051, 81.052, 81.0531, and 117.001 - 117.102; Texas Utilities Code, §§121.201 - 121.211; 121.251, 121.252; and 121.5005 - 121.507; and 49 United States Code Annotated, §§60101,*et seq.*, are affected by the proposed amendments.

Statutory authority: Texas Natural Resources Code, §§81.051, 81.052, 81.0531, and 117.001 - 117.102; Texas Utilities Code, §§121.201 - 121.211; 121.251, and 121.252; and 121.5005 - 121.507; and 49 United States Code Annotated, §§60101, *et seq*.

Cross-reference to statute: Texas Natural Resources Code, Chapters 81 and Chapter 117; Texas Utilities Code, Chapter 121; and 49 United States Code Annotated, Chapter 601.

Issued in Austin, Texas on October 9, 2007.

§8.1. General Applicability and Standards.

(a) Applicability.

(1) The rules in this chapter establish minimum standards of accepted good practice and apply to:

(A) all gas pipeline facilities and facilities used in the intrastate transportation of [~~natural~~] gas, including master metered systems, as provided in 49 United States Code (U.S.C.) §60101, *et seq.*; and Texas Utilities Code, §§121.001 - 121.507;

(B) onshore pipeline facilities, including production lines and flow lines, beginning at the first point of measurement and ending as defined by 49 CFR Part 192 as the beginning of an onshore gathering line;

(C) [~~(B)~~] the intrastate pipeline transportation of hazardous liquids or carbon dioxide and all intrastate pipeline facilities as provided in 49 U.S.C. §60101, *et seq.*; and Texas Natural Resources Code, §§117.011 and 117.012; and

(D) [~~(C)~~] all pipeline facilities originating in Texas waters (three marine leagues and all bay areas). These pipeline facilities include those production and flow lines originating at the well.

(2) (No change.)

(b) Minimum safety standards. The Commission adopts by reference the following provisions, as modified in this chapter, effective August 16, 2007 [~~July 1, 2005~~].

(1) Gas [~~Natural gas~~] pipelines shall be designed, constructed, maintained, and operated in accordance with 49 U.S.C. §60101, *et seq.*; 49 Code of Federal Regulations (CFR) Part 191, Transportation of Natural and Other Gas by Pipeline; Annual Reports, Incident Reports, and Safety-Related Condition Reports; 49 CFR Part 192, Transportation of Natural and Other Gas by Pipeline: Minimum Federal Safety Standards; and 49 CFR Part 193, Liquefied Natural Gas Facilities: Federal Safety Standards.

(2) (No change.)

(3) All operators of pipelines and/or pipeline facilities shall comply with 49 CFR Part 199, Drug and Alcohol Testing, and 49 CFR Part 40, Procedures for Transportation Workplace Drug & Alcohol Testing Programs.

(4) All operators of pipelines and/or pipeline facilities shall comply with 16 TAC §3.70, relating to Pipeline Permits Required.

(c) - (f) (No change.)

§8.5. Definitions.

In addition to the definitions given in 49 CFR Parts 40, 191, 192, 193, 195, and 199, the following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) - (17) (No change.)

(18) Master metered system--A pipeline system (other than one designated as a local distribution system) for distributing natural gas within but not limited to a definable area, such as a mobile home park, housing project, or apartment complex, where the operator purchases metered gas from an outside source for resale through a gas distribution pipeline system. The gas distribution pipeline system supplies the ultimate consumer who either purchases the gas directly through a meter or by other means such as rents.

(19) - (23) (No change.)

(24) Pressure test--Those techniques and methodologies prescribed for leak-test and strength-test requirements for pipelines. For [~~natural~~] gas pipelines, the requirements are found in 49 Code of Federal Regulations (CFR) Part 192, and specifically include 49 CFR 192.505, 192.507, 192.515, and 192.517. For hazardous liquids pipelines, the requirements are found in 49 CFR Part 195, and specifically include 49 CFR 195.305, 195.306, 195.308, and 195.310.

(25) - (27) (No change.)

(28) Transportation of gas--The gathering, transmission, or distribution of gas by pipeline or its storage within the State of Texas. For purposes of safety regulation, the term shall [~~not~~] include onshore pipeline facilities, production lines, and flow lines, beginning at the first point of measurement and ending as defined by 49 CFR Part 192 as the beginning of an onshore gathering line, and the gathering of gas in Class 2, 3, or 4 areas as defined by 49 CFR Part 192.5 [~~those rural locations which lie outside the limits of any incorporated or unincorporated city, town, village, or any other designated residential or commercial area such as a subdivision, a business or shopping center, a community development, or any similar populated area which the Secretary of Transportation may define as a nonrural area~~].

(29) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on October 9, 2007.

TRD-200704801
Mary Ross McDonald
Managing Director
Railroad Commission of Texas
Earliest possible date of adoption: November 25, 2007
For further information, please call: (512) 475-1295

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SUBCHAPTER B. REQUIREMENTS FOR ALL PIPELINES

16 TAC §§8.101, 8.115, 8.135

The Commission proposes the amendments and new rule under Texas Natural Resources Code, §81.051 and §81.052, which give the Commission jurisdiction over all common carrier pipelines in Texas, persons owning or operating pipelines in Texas, and their pipelines and oil and gas wells, and authorize the Commission to adopt all necessary rules for governing and regulating persons and their operations under the jurisdiction of the Commission as set forth in §81.051, including such rules as the Commission may consider necessary and appropriate to implement state responsibility under any federal law or rules governing such persons and their operations; Texas Natural Resources Code, §81.0531, which requires the Commission to adopt by rule guidelines to be used in determining the amount of the penalty for a violation of a provision of Title 3 of the Texas Natural Resources Code or a rule, order, license, permit, or certificate that relates to pipeline safety; Texas Natural Resources Code, §§117.001 - 117.102, which give the Commission jurisdiction over all pipeline transportation of hazardous liquids or carbon dioxide and over all hazardous liquid or carbon dioxide pipeline facilities as provided by 49 U.S.C. §§60101, *et seq.*; and Texas Utilities Code, §§121.201 - 121.210, which authorize the Commission to adopt safety standards and practices applicable to the transportation of gas and to associated pipeline facilities within Texas to the maximum degree permissible under and to take any other requisite action in accordance with, 49 United States Code Annotated, §§60101, *et seq.*; §121.251 and §121.252, which authorize the Commission to regulate the use of malodorants in natural gas; and §§121.5005 - 121.507, which give the Commission authority to regulate the testing of natural gas piping systems in school facilities.

Texas Natural Resources Code, §§81.051, 81.052, 81.0531, and 117.001 - 117.102; Texas Utilities Code, §§121.201 - 121.211; 121.251, 121.252; and 121.5005 - 121.507; and 49 United States Code Annotated, §§60101,*et seq.*, are affected by the proposed amendments and new rule.

Statutory authority: Texas Natural Resources Code, §§81.051, 81.052, 81.0531, and 117.001 - 117.102; Texas Utilities Code, §§121.201 - 121.211; 121.251, 121.252, and 121.5005 - 121.507; and 49 United States Code Annotated, §§60101, *et seq*.

Cross-reference to statute: Texas Natural Resources Code, Chapters 81 and Chapter 117; Texas Utilities Code, Chapter 121; and 49 United States Code Annotated, Chapter 601.

Issued in Austin, Texas on October 9, 2007.

§8.101. Pipeline Integrity Assessment and Management Plans for Natural Gas and Hazardous Liquids Pipelines.

(a) (No change.)

(b) By February 1, 2002, operators of intrastate transmission [~~and gathering~~] lines subject to the requirements of 49 CFR Part 192 or 49 CFR Part 195 shall have designated to the Commission on a system-by-system or segment within each system basis whether the pipeline operator has chosen to use the risk-based analysis pursuant to paragraph (1) of this subsection or the prescriptive plan authorized by paragraph (2) of this subsection. Hazardous liquid pipeline operators using the risk-based plan shall complete at least 50% of the initial assessments by January 1, 2006, and the remainder by January 1, 2011; operators using the prescriptive plan shall complete the initial integrity testing by January 1, 2006, or January 1, 2011, pursuant to the requirements of paragraph (2) of this subsection. Natural gas pipeline operators using the risk-based plan shall complete at least 50% of the initial assessments by December 17, 2007, and the remainder by December 17, 2012; operators using the prescriptive plan shall complete the initial integrity testing by December 17, 2007, or December 17, 2012, pursuant to the requirements of paragraph (2) of this subsection.

(1) (No change.)

(2) Operators electing not to use the risk-based plan in paragraph (1) of this subsection shall conduct a pressure test or an in-line inspection and take remedial action in accordance with the following schedule:
Figure 1: 16 TAC §8.101(b)(2)
Figure 2: 16 TAC §8.101(b)(2) (No change.)

(c) - (f) (No change.)

§8.115. New Construction Commencement Report.

Except as set forth below, at least 30 days prior to commencement of construction of any installation totaling one mile or more of pipe, each operator shall file with the Commission a report stating the proposed originating and terminating points for the pipeline, counties to be traversed, size and type of pipe to be used, type of service, design pressure, and length of the proposed line on Form PS-48. Each operator shall file a new construction report for the initial construction of a new liquefied petroleum gas distribution system. Each operator of a sour gas pipeline and/or pipeline facilities, as defined in 16 TAC §3.106(b), relating to Sour Gas Pipeline Facility Construction Permit, shall file a new construction report and Form PS-79, Application for a Permit to Construct a Sour Gas Pipeline Facility. New construction on natural gas distribution or master meter systems of less than five miles is exempted [~~excepted~~] from this reporting requirement.

§8.135. Penalty Guidelines for Pipeline Safety Violations.

(a) Only guidelines. This section complies with the requirements of Texas Natural Resources Code, §81.0531(d), and Texas Utilities Code, §121.206(d). The penalty amounts contained in the tables in this section are provided solely as guidelines to be considered by the Commission in determining the amount of administrative penalties for violations of provisions of Title 3 of the Texas Natural Resources Code relating to pipeline safety, or of rules, orders or permits relating to pipeline safety adopted under those provisions, and for violations of Texas Utilities Code, §121.201, or Subchapter I (§§121.451 - 121.454), or a safety standard or rule relating to the transportation of gas and gas pipeline facilities adopted under those provisions.

(b) Commission authority. The establishment of these penalty guidelines shall in no way limit the Commission's authority and discretion to assess administrative penalties in any amount up to the statutory maximum when warranted by the facts in any case.

(c) Factors considered. The amount of any penalty requested, recommended, or finally assessed in an enforcement action will be determined on an individual case-by-case basis for each violation, taking into consideration the following factors:

(1) the person's history of previous violations, including the number of previous violations;

(2) the seriousness of the violation and of any pollution resulting from the violation;

(3) any hazard to the health or safety of the public;

(4) the degree of culpability;

(5) the demonstrated good faith of the person charged; and

(6) any other factor the Commission considers relevant.

(d) Typical penalties. Typical penalties for violations of provisions of Title 3 of the Texas Natural Resources Code relating to pipeline safety, or of rules, orders, or permits relating to pipeline safety adopted under those provisions, and for violations of Texas Utilities Code, §121.201, or Subchapter I (§§121.451 - 121.454), or a safety standard or rule relating to the transportation of gas and gas pipeline facilities adopted under those provisions are set forth in Table 1.
Figure: 16 TAC §8.135(d)

(e) Penalty enhancements for certain violations. For violations that involve threatened or actual pollution; result in threatened or actual safety hazards; or result from the reckless or intentional conduct of the person charged, the Commission may assess an enhancement of the typical penalty, as shown in Table 2. The enhancement may be in any amount in the range shown for each type of violation.
Figure: 16 TAC §8.135(e)

(f) Penalty enhancements for certain violators. For violations in which the person charged has a history of prior violations within seven years of the current enforcement action, the Commission may assess an enhancement based on either the number of prior violations or the total amount of previous administrative penalties, but not both. The actual amount of any penalty enhancement will be determined on an individual case-by-case basis for each violation. The guidelines in Tables 3 and 4 are intended to be used separately. Either guideline may be used where applicable, but not both.
Figure 1: 16 TAC §8.135(f)
Figure 2: 16 TAC §8.135(f)

(g) Penalty reduction for settlement before hearing. The recommended penalty for a violation may be reduced by up to 50% if the person charged agrees to a settlement before the Commission conducts an administrative hearing to prosecute a violation. Once the hearing is convened, the opportunity for the person charged to reduce the basic penalty is no longer available. The reduction applies to the basic penalty amount requested and not to any requested enhancements.

(h) Demonstrated good faith. In determining the total amount of any penalty requested, recommended, or finally assessed in an enforcement action, the Commission may consider, on an individual case-by-case basis for each violation, the demonstrated good faith of the person charged. Demonstrated good faith includes, but is not limited to, actions taken by the person charged before the filing of an enforcement action to remedy, in whole or in part, a violation of the pipeline safety rules or to mitigate the consequences of a violation of the pipeline safety rules.

(i) Penalty calculation worksheet. The penalty calculation worksheet shown in Table 5 lists the typical penalty amounts for certain violations; the circumstances justifying enhancements of a penalty and the amount of the enhancement; and the circumstances justifying a reduction in a penalty and the amount of the reduction.
Figure: 16 TAC §8.135(i)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on October 9, 2007.

TRD-200704800
Mary Ross McDonald
Managing Director
Railroad Commission of Texas
Earliest possible date of adoption: November 25, 2007
For further information, please call: (512) 475-1295

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SUBCHAPTER C. REQUIREMENTS FOR NATURAL GAS PIPELINES ONLY

16 TAC §§8.203, 8.205, 8.210, 8.215, 8.230, 8.235

The Commission proposes the amendments under Texas Natural Resources Code, §81.051 and §81.052, which give the Commission jurisdiction over all common carrier pipelines in Texas, persons owning or operating pipelines in Texas, and their pipelines and oil and gas wells, and authorize the Commission to adopt all necessary rules for governing and regulating persons and their operations under the jurisdiction of the Commission as set forth in §81.051, including such rules as the Commission may consider necessary and appropriate to implement state responsibility under any federal law or rules governing such

persons and their operations; Texas Natural Resources Code, §81.0531, which requires the Commission to adopt by rule guidelines to be used in determining the amount of the penalty for a violation of a provision of Title 3 of the Texas Natural Resources Code, or a rule, order, license, permit, or certificate that relates to pipeline safety; Texas Natural Resources Code, §§117.001 - 117.102, which give the Commission jurisdiction over all pipeline transportation of hazardous liquids or carbon dioxide and over all hazardous liquid or carbon dioxide pipeline facilities as provided by 49 U.S.C. §§60101, *et seq*.; and Texas Utilities Code, §§121.201 - 121.210, which authorize the Commission to adopt safety standards and practices applicable to the transportation of gas and to associated pipeline facilities within Texas to the maximum degree permissible under, and to take any other requisite action in accordance with 49 United States Code Annotated, §§60101, *et seq*.; §121.251 and §121.252, which authorize the Commission to regulate the use of malodorants in natural gas; and §§121.5005 - 121.507, which give the Commission authority to regulate the testing of natural gas piping systems in school facilities.

Texas Natural Resources Code, §§81.051, 81.052, 81.0531, and 117.001 - 117.102; Texas Utilities Code, §§121.201 - 121.211; 121.251, 121.252; and 121.5005 - 121.507; and 49 United States Code Annotated, §§60101,*et seq*., are affected by the proposed amendments.

Statutory authority: Texas Natural Resources Code, §§81.051, 81.052, 81.0531, and 117.001 - 117.102; Texas Utilities Code, §§121.201 - 121.211; 121.251, 121.252, and 121.5005 - 121.507; and 49 United States Code Annotated, §§60101, *et seq*.

Cross-reference to statute: Texas Natural Resources Code, Chapters 81 and Chapter 117; Texas Utilities Code, Chapter 121; and 49 United States Code Annotated, Chapter 601.

Issued in Austin, Texas on October 9, 2007.

§8.203. Supplemental Regulations.

The following provisions supplement the regulations appearing in 49 CFR Part 192, adopted under §8.1(b) of this chapter (relating to General Applicability and Standards).

~~[(1) Section 192.3 is supplemented by the following: "Short section of pipeline" means a segment of a pipeline 100 feet or less in length.]~~

(1) [~~(2)~~] Section 192.455(b) is supplemented by the following language after the first sentence: "Tests, investigation, or experience must be backed by documented proof to substantiate results and determinations."

(2) [~~(3)~~] Section 192.457 is supplemented:

(A) by the following language in subsection (b)(3): "(3) Bare or coated distribution lines. The operator shall determine the areas of active corrosion by electrical survey, or where electrical survey is impractical, by the study of corrosion and leak history records, by leak detection survey, or by other effective means, documented by data substantiating results and determinations";

(B) by the following subsection: "(d) When a condition of active external corrosion is found, positive action must be taken to mitigate and control the effects of the corrosion. Schedules must be established for application of corrosion control. Monitoring effectiveness must be adequate to mitigate and control the effects of the corrosion prior to its becoming a public hazard or endangering public safety."

(3) [~~(4)~~] Section 192.465 is supplemented:

(A) by the following language after the first sentence of subsection (a): "Test points (electrode locations) used when taking pipe-to-soil readings for determining cathodic protection shall be selected so as to give representative pipe-to-soil readings. Test points (electrode locations) over or near an anode or anodes shall not, by themselves, be considered representative readings";

(B) by the following language in subsection (e): "(e) However, on distribution lines and where an electrical survey is impractical on transmission lines, areas of active corrosion may be determined by other effective means, documented by data substantiating results and determinations that include review and analysis of leak repair and inspection records, corrosion monitoring records, exposed pipe inspection records, the pipeline environment, and by leak detection survey." [~~"(e) After the initial evaluation required by paragraphs (b) and (c) of §192.455 and paragraph (b) of §192.457, each operator shall, at intervals not exceeding three years, reevaluate its unprotected pipelines and cathodically protect them in accordance with this subpart in areas in which active corrosion is found. The operator shall determine the areas of active corrosion by electrical survey, or where electrical survey is impractical, by the study of corrosion and leak history records, by leak detection survey, or by other effective means, documented by data substantiating results and determinations"~~];

(C) by the following subsection: "(f) When leak detection surveys are used to determine areas of active corrosion or re-evaluate unprotected pipelines, the survey frequency must be increased to monitor the corrosion rate and control the condition. The detection equipment used must have sensitivity adequate to detect gas concentration below the lower explosive limit and be suitable for such use."

(5) Section 192.475(a) is supplemented by the following language at the end: "Corrosive gas" means a gas which, by chemical reaction with the pipe to which it is exposed, usually metal, produces a deterioration of the material."

(6) Section 192.479 is supplemented by the following subsection: "(d) [~~(c)~~] 'atmospheric corrosion' means aboveground corrosion caused by chemical or electrochemical reaction between a pipe material, usually a metal, and its environment, that produces a deterioration of the material."

§8.205. Written Procedure for Handling Natural Gas Leak Complaints.

Each gas company shall have written procedures which shall include at a minimum the following provisions:

(1) - (2) (No change.)

(3) a requirement that supervisory personnel review calls received and actions taken to insure no hazardous conditions exist. Supervisory review shall be completed and documented by 10:00 a.m. each day for all calls received by midnight on the previous day; [~~at the close of the work day;~~]

(4) - (7) (No change.)

§8.210. Reports.

(a) Accident, leak, or incident report.

(1) Telephonic report. At the earliest practical moment or within two hours following discovery, a gas company shall notify the Commission by telephone of any event that involves a release of gas from its pipelines as defined in 49 CFR Part 192.3. [~~any pipeline which:~~]

~~[(A) caused a death or any personal injury requiring hospitalization;]~~

[(B) required taking any segment of a transmission line out of service, except as described in paragraph (2) of this subsection;]

[(C) resulted in unintentional gas ignition requiring emergency response;]

[(D) caused estimated damage to the property of the operator, others, or both totaling $5,000 or more, including gas loss; or]

[(E) could reasonably be judged by the operator as significant because of location, rerouting of traffic, evacuation of any building, media interest, etc., even though it does not meet subparagraphs (A), (B), (C), or (D) of this paragraph.]

[(2) A gas company shall not be required to make a telephonic report for a leak or incident which meets only paragraph (1)(B) of this subsection if that leak or incident occurred solely as a result of or in connection with planned or routine maintenance or construction.]

(2) [(3)] The telephonic report shall be made to the Commission's 24-hour emergency line at (512) 463-6788 and shall include the following:

(A) the operator or gas company's name;

(B) the location of the leak or incident;

(C) the time of the incident or accident;

(D) the fatalities and/or personal injuries;

(E) the phone number of the operator; [and]

(F) the phone number of the operator's on-site person;

(G) estimated property damage, including cost of gas lost, of the operator, others, or both; and

(H) [(F)] any other significant facts relevant to the accident or incident. Ignition, explosion, rerouting of traffic, evacuation of any building, and media interest are included as significant facts.

(3) [(4)] Written report.

(A) Following the initial telephonic report for accidents, leaks, or incidents described in 49 CFR Part 191 [paragraph (1)(A) - (C) and (E) of this subsection], the operator who made the telephonic report shall submit to the Commission a written report summarizing the accident or incident. The report shall be submitted as soon as practicable within 30 calendar days after the date of the telephonic report. The written report shall be made [in duplicate] on forms supplied by the Department of Transportation. For reports submitted electronically to the Department of Transportation, a copy of the report and confirmation shall be forwarded to the Division or electronically to safety@rrc.state.tx.us. Reports not submitted electronically to the Department of Transportation shall be sent to the Division on an original signed report form. [The Division shall forward one copy to the Department of Transportation.]

(B) The written report is not required to be submitted for master metered systems.

[(C) The written report is required for estimated damage to the property of the operator, others, or both totaling $50,000 or more, including gas loss.]

(C) [(D)] The Commission may require an operator to submit a written report for an accident or incident not otherwise required to be reported.

(b) Pipeline safety annual reports.

(1) Except as provided in paragraph (2) of this subsection, each gas company shall submit an annual report for its intrastate systems in the same manner as required by 49 CFR Part 191. The report shall be submitted to the Division [in duplicate] on forms supplied by the Department of Transportation not later than March 15 of a year for the preceding calendar year. [The Division shall forward one copy to the Department of Transportation.]

(2) (No change.)

(c) - (d) (No change.)

(e) Leak Reporting. Each gas company shall submit to the Division a summary of all identified leaks on its pipeline systems. The leak report shall be a summary of all leaks identified on the entire pipeline system including data required by the Safety Division on Form PS-95. Each gas company shall file two reports: one for all repaired leaks over the specified times period, and a second report listing all of the unrepaired leaks. Each gas company shall submit leak reports using the Commission's online reporting system by June 30 and December 31 of each calendar year.

§8.215. Odorization of Gas.

(a) Odorization of gas.

(1) - (2) (No change.)

(3) Gas shall be odorized by the user and verified by the supplier if:

(A) - (B) (No change.)

(4) (No change.)

(b) Odorization equipment. Gas companies shall use commercially available odorization equipment [approved by the Commission as follows].

[(1) Commercial manufacturers of odorization equipment manufactured under accepted rules and practices of the industry shall submit plans and specifications of such equipment to the Division with Form PS-25 for approval of standardized models and designs. The Division shall maintain a list of approved commercially available odorization equipment.]

[(2)] Each operator shall be required to maintain a list of odorization equipment used in its particular operations, including the location of the odorization equipment, the brand name, model number, and the date last serviced. The list shall be available for review during safety evaluations by the Division.

[(3) Prior to using shop-made or other odorization equipment not approved by the Commission under paragraph (1) of this subsection, a gas company shall submit to the Division Form PS-25 and plans and specifications for the equipment. Within 30 days of receiving Form PS-25 and related documents, the Division shall notify the gas company in writing whether the equipment is approved or not approved for the requested use.]

(c) Malodorants. Gas companies shall use commercially available [The Division shall maintain a list of approved] malodorants which shall meet the following criteria.

(1) - (2) (No change.)

(3) The malodorant agent to be introduced in the gas, or the natural malodor of the gas, or the combination of the malodorant and the natural malodor of the gas shall have a distinctive malodor so that when gas is present in air at a concentration of one-fifth of the lower explosive limit [of as much as 1.0% or less by volume], the malodor is readily detectable by an individual with a normal sense of smell.

(4) (No change.)

(d) Malodorant tests and reports.

(1) (No change.)

(2) Each natural gas operator shall check, test, and service farm tap odorizers at intervals not exceeding 15 months, but at least once each calendar year [least annually according to the terms of the approved schedule of service and maintenance for farm tap odorizers Form PS-9, filed with and approved by the Division]. Each gas company shall maintain records to reflect the date of service and maintenance on file for at least two years.

(e) Malodorant concentration tests and reports.

(1) Each gas company shall conduct the following concentration tests on the gas supplied through its facilities and required to be odorized. [Other tests conducted in accordance with procedures approved by the Division may be substituted for the following room and malodorant concentration test meter methods.] Test points shall be distant from odorizing equipment, so as to be representative of the odorized gas in the system. Tests shall be performed at intervals not exceeding 15 months, but at least once each calendar year or at such other times as the Division may reasonably require. The results of these tests shall be recorded [on the approved odorant concentration test Form PS-6 or equivalent] and retained in each company's files for at least two years.

[(A) Room test--Test results shall include the following:]

[(i) odorizer name and location;]

[(ii) date test performed, test time, location of test, and distance from odorizer, if applicable;]

[(iii) percent gas in air when malodor is readily detectable; and]

[(iv) signatures of witnesses to the test and the supervisor of the test.]

[(B)] Malodorant concentration test meter--Test results shall include the following:

(A) [(i)] odorizer name and location;

(B) [(ii)] malodorant concentration meter make, model, and serial number;

(C) [(iii)] date test performed, test time, odorizer tested, and distance from odorizer[, if applicable];

(D) [(iv)] test results indicating percent gas in air when malodor is readily detectable; and

(E) [(v)] signature of person performing the test.

(2) - (3) (No change.)

§8.230. School Piping Testing.

(a) - (b) (No change.)

(c) Testing.

(1) A natural gas piping pressure test performed under a municipal code in compliance with paragraphs (4) and (5) [paragraph (4)] of this subsection shall satisfy the testing requirements.

(2) A pressure test to determine if the natural gas piping in each school facility will hold at least normal operating pressure shall be performed as follows:

(A) School facility pipe testing includes all gas piping from the outlet of the purchase meter to each inlet valve of each appliance.

(B) [(A)] For systems on which the normal operating pressure is less than 0.5 psig, the test pressure shall be 5 psig and the time interval shall be 30 minutes.

(C) [(B)] For systems on which the normal operating pressure is 0.5 psig or more, the test pressure shall be 1.5 times the normal operating pressure or 5 psig, whichever is greater, and the time interval shall be 30 minutes.

(D) [(C)] A pressure test using normal operating pressure shall be utilized only on systems operating at 5 psig or greater, and the time interval shall be one hour.

(3) - (7) (No change.)

(d) (No change.)

§8.235. Natural Gas Pipelines Public Education and Liaison.

(a) Liaison activities required. Each operator of a natural gas pipeline or natural gas pipeline facilities or the operator's designated representative shall communicate and conduct liaison activities at intervals not exceeding 15 months, but at least once each calendar year [on an annual basis] with fire, police, and other appropriate public emergency response officials. The liaison activities are those required by 49 CFR Part 192.615(c)(1) - (4). These liaison activities shall be conducted in person, except as provided by this section.

(b) - (d) (No change.)

(e) Proximity to public school. Each owner or operator of a natural gas pipeline or natural gas pipeline facility any part of which is located within 1,000 feet of a public school building or public school recreational area shall notify the Commission by filing with the Safety Division, no later than January 15 of every even-numbered year, the following information:

(1) - (3) (No change.)

(f) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on October 9, 2007.

TRD-200704802
Mary Ross McDonald
Managing Director
Railroad Commission of Texas
Earliest possible date of adoption: November 25, 2007
For further information, please call: (512) 475-1295

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SUBCHAPTER D. REQUIREMENTS FOR HAZARDOUS LIQUIDS AND CARBON DIOXIDE PIPELINES ONLY

16 TAC §§8.301, 8.305, 8.310, 8.315

The Commission proposes the amendments under Texas Natural Resources Code, §81.051 and §81.052, which give the Commission jurisdiction over all common carrier pipelines in Texas, persons owning or operating pipelines in Texas, and their pipelines and oil and gas wells, and authorize the Commission to adopt all necessary rules for governing and regulating persons and their operations under the jurisdiction of the Commission as set forth in §81.051, including such rules as the Commission may consider necessary and appropriate to implement state

responsibility under any federal law or rules governing such persons and their operations; Texas Natural Resources Code, §81.0531, which requires the Commission to adopt by rule guidelines to be used in determining the amount of the penalty for a violation of a provision of Title 3 of the Texas Natural Resources Code, or a rule, order, license, permit, or certificate that relates to pipeline safety; Texas Natural Resources Code, §§117.001 - 117.102, which give the Commission jurisdiction over all pipeline transportation of hazardous liquids or carbon dioxide and over all hazardous liquid or carbon dioxide pipeline facilities as provided by 49 U.S.C. §§60101, *et seq.*; and Texas Utilities Code, §§121.201 - 121.210, which authorize the Commission to adopt safety standards and practices applicable to the transportation of gas and to associated pipeline facilities within Texas to the maximum degree permissible under, and to take any other requisite action in accordance with 49 United States Code Annotated, §§60101, *et seq.*; §121.251 and §121.252, which authorize the Commission to regulate the use of malodorants in natural gas; and §§121.5005 - 121.507, which give the Commission authority to regulate the testing of natural gas piping systems in school facilities.

Texas Natural Resources Code, §§81.051, 81.052, 81.0531, and 117.001 - 117.102; Texas Utilities Code, §§121.201 - 121.211; 121.251, 121.252, and 121.5005 - 121.507; and 49 United States Code Annotated, §§60101,*et seq.*, are affected by the proposed amendments.

Statutory authority: Texas Natural Resources Code, §§81.051, 81.052, 81.0531, and 117.001 - 117.102; Texas Utilities Code, §§121.201 - 121.211, 121.251, 121.252; and 121.5005 - 121.507; and 49 United States Code Annotated, §§60101, *et seq*.

Cross-reference to statute: Texas Natural Resources Code, Chapters 81 and Chapter 117; Texas Utilities Code, Chapter 121; and 49 United States Code Annotated, Chapter 601.

Issued in Austin, Texas on October 9, 2007.

§8.301. Required Records and Reporting.

(a) Accident reports. In the event of any failure or accident involving an intrastate pipeline facility from which any hazardous liquid or carbon dioxide is released, if the failure or accident is required to be reported by 49 CFR Part 195, the operator shall report to the Commission as follows.

(1) Incidents involving crude oil. In the event of an accident involving crude oil, the operator shall:

(A) notify the Division, which shall notify the Commission's appropriate Oil and Gas district office, by telephone to the Commission's emergency line at (512) 463-6788 at the earliest practicable moment following discovery of the incident (within two hours) and include the following information:

(i) - (v) (No change.)

(vi) telephone number of operator;

(vii) telephone number of the operator's on-site person;

(viii) [~~(vi)~~] other significant facts relevant to the accident or incident. Ignition, explosion, rerouting of traffic, evacuation of any building, and media interest are included as significant facts.

(B) within 30 days of discovery of the incident, submit a completed Form H-8 to the Oil and Gas Division of the Commission. In situations specified in the 49 CFR Part 195, the operator shall also file a copy [~~duplicate copies~~] of the required Department of Transportation form with the Division. For reports submitted electronically to the Department of Transportation, the operator shall forward a copy of the report and confirmation to the Division or electronically to safety@rrc.state.tx.us. If an operator does not submit reports electronically to the Department of Transportation, the operator shall send the report to the Division on an original signed report form.

(2) Hazardous liquids, other than crude oil, and carbon dioxide. For incidents involving hazardous liquids, other than crude oil, and carbon dioxide, the operator shall:

(A) notify the Division of such incident by telephone to the Commission's emergency line at (512) 463-6788 at the earliest practicable moment following discovery (within two hours) and include the information listed in paragraph (1)(A)(i) - (viii) of this subsection; and

(B) within 30 days of discovery of the incident, file [~~in duplicate~~] with the Division a written report using the appropriate Department of Transportation form (as required by 49 CFR Part 195) or a facsimile. For reports submitted electronically to the Department of Transportation, the operator shall forward a copy of the report and confirmation to the Division or electronically to safety@rrc.state.tx.us. If an operator does not submit reports electronically to the Department of Transportation, the operator shall send the report to the Division on an original signed report form.

(b) Annual report. Each operator shall file with the Commission an annual report for its intrastate systems located in Texas in the same manner as required by 49 CFR Part 195 [~~on Form PS-45 listing line sizes and lengths, hazardous liquids or carbon dioxide being transported, and accident/failure data~~]. The report shall be filed with the Commission on forms supplied by the Department of Transportation on or before March 15 of a year for the preceding calendar year reported.

(c) Safety-related condition reports. Each operator shall submit to the Division in writing a safety-related condition report for any condition outlined in 49 CFR 195.

(d) [~~(c)~~] Facility response plans. Simultaneously with filing either an initial or a revised facility response plan with the United States Department of Transportation, each operator shall submit to the Division a copy of the initial or revised facility response plan prepared under the Oil Pollution Act of 1990, for all or any part of a hazardous liquid pipeline facility located landward of the coast.

§8.305. Corrosion Control Requirements.

Operators shall comply or ensure compliance with the following requirements for the installation and construction of new pipeline metallic systems, the relocation or replacement of existing facilities, and the operation and maintenance of steel pipelines.

[~~(1) Atmospheric corrosion control. Each aboveground pipeline or portion of pipeline exposed to the atmosphere shall be cleaned and coated or jacketed with material suitable for the prevention of atmospheric corrosion. For onshore pipelines, the intervals between inspections shall not exceed five years; for offshore pipelines, reevaluations shall be required at least once each calendar year, with intervals not to exceed 15 months.~~]

(1) [~~(2)~~] Coatings. All coated pipe used for the transport of hazardous liquids or carbon dioxide shall be electrically inspected prior to placement using coating deficiency (holiday) detectors to check for any faults not observable by visual examination. The holiday detector shall be operated in accordance with manufacturer's instructions and at a voltage level appropriate for the electrical characteristics of the pipeline system being tested.

(2) [~~(3)~~] Installation. Joints, fittings, and tie-ins shall be coated with materials compatible with the coatings on the pipe.

(3) [~~(4)~~] Cathodic protection test stations. Electrical measurements [~~Each cathodically protected pipeline shall have test stations or other electrical measurement contact points sufficient to determine the adequacy of cathodic protection. These locations~~] shall include but are not limited to pipe casing installations and all foreign metallic cathodically protected structures. [~~Test stations (electrode locations) used when taking pipe-to-soil readings for determining cathodic protection shall be selected to give representative pipe-to-soil readings.~~] Readings taken at test stations (electrode locations) over or near one or more anodes shall not, by themselves, be considered representative.

(A) All test lead wire attachments and bared test lead wires shall be coated with an electrically insulating material. Where the pipe is coated, the insulation of the test lead wire material shall be compatible with the pipe coating and wire insulation.

(B) Cathodic protection systems shall meet or exceed the minimum criteria set forth in Criteria For Cathodic Protection of the most current edition of the National Association of Corrosion Engineers (NACE) Standard RP-01-69.

(4) [~~(5)~~] Monitoring and inspection.

[~~(A) Each cathodic protection rectifier or impressed current power source shall be inspected at least six times each calendar year, with intervals not to exceed 2 1/2 months, to ensure that it is operating properly.~~]

[~~(B) Each reverse-current switch, diode, and interference bond whose failure would jeopardize structure protection shall be checked electrically for proper performance six times each calendar year, with intervals not to exceed 2 1/2 months. Each remaining interference bond shall be checked at least once each calendar year, with intervals not to exceed 15 months.~~]

[~~(C)~~] Each operator shall utilize right-of-way inspections to determine areas where interfering currents are suspected. In the course of these inspections, personnel shall be alert for electrical or physical conditions which could indicate interference from a neighboring source. Whenever suspected areas are identified, the operator shall conduct appropriate electrical tests within six months to determine the extent of interference and take appropriate action.

(5) [~~(6)~~] Remedial action. Each operator shall take prompt remedial action to correct any deficiencies observed during monitoring.

§8.310. Hazardous Liquids and Carbon Dioxide Pipelines Public Education and Liaison.

(a) Liaison activities required. Each operator of a hazardous liquid or carbon dioxide pipeline or pipeline facilities or the operator's designated representative shall communicate and conduct liaison activities at intervals not exceeding 15 months, but at least once each calendar year [~~on an annual basis~~] with fire, police, and other appropriate public emergency response officials. The liaison activities are those required by 49 CFR Part 195.402(c)(12). These liaison activities shall be conducted in person, except as provided by this section.

(b) - (e) (No change.)

§8.315. Hazardous Liquids and Carbon Dioxide Pipelines or Pipeline Facilities Located Within 1,000 Feet of a Public School Building or Facility.

(a) - (b) (No change.)

(c) Each pipeline owner and operator to which this section applies shall, for each pipeline or pipeline facility any part of which is located within 1,000 feet of a public school building containing classrooms, or within 1,000 feet of any other public school facility where students congregate, file with the Commission's Safety Division, no later than January 15 of every odd numbered year, [~~2005, and every two years thereafter,~~] the following information:

(1) - (3) (No change.)

(d) - (f) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on October 9, 2007.

TRD-200704803
Mary Ross McDonald
Managing Director
Railroad Commission of Texas
Earliest possible date of adoption: November 25, 2007
For further information, please call: (512) 475-1295

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SUBCHAPTER C. REQUIREMENTS FOR NATURAL GAS PIPELINES ONLY

16 TAC §8.245

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Railroad Commission of Texas or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Railroad Commission of Texas (Commission) proposes the repeal of §8.245, relating to Penalty Guidelines for Pipeline Safety Violations. The Commission proposes the repeal in order to propose the same rule under a different rule number. The proposed new rule, §8.135, with the same title, is proposed in a concurrent rulemaking.

Mary McDaniel, Director, Safety Division, has determined that, for each year of the first five years the proposed repeal will be in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the repeal.

Ms. McDaniel has also determined that, for each year of the first five years the proposed repeal is in effect, the public benefit anticipated as a result of enforcing the repeal will be clarification of the Commission's pipeline safety violation penalties, by having the rule in the subchapter that applies to all pipelines. There is no anticipated economic cost to individuals or small businesses required to comply with the proposed repeal.

Texas Government Code, §2006.002, requires a state agency considering adoption of a rule that would have an adverse economic effect on small businesses or micro-businesses to reduce the effect if doing so is legal and feasible considering the purpose of the statutes under which the rule is to be adopted. Ms. McDaniel has determined that there is no adverse economic effect on small businesses or micro-businesses, because the repeal is being proposed for the purpose of moving the rule to a different subchapter.

Comments on the proposal may be submitted to Rules Coordinator, Office of General Counsel, Railroad Commission of Texas, P.O. Box 12967, Austin, Texas 78711-2967; online at

www.rrc.state.tx.us/rules/commentform.html; or by electronic mail to rulescoordinator@rrc.state.tx.us. Comments will be accepted until 5:00 p.m. on Monday, November 26, 2007, which is 31 days after publication in the *Texas Register*. The Commission finds that this comment period is reasonable because the proposal as well as an online comment form will be available on the Commission's web site no later than the day after the open meeting at which the Commission approves publication of the proposal, giving interested persons over two additional weeks to review, analyze, draft, and submit comments. The Commission encourages all interested persons to submit comments no later than the deadline. The Commission cannot guarantee that comments submitted after the deadline will be considered. For further information, call Ms. McDaniel at (512) 463-7166. The status of Commission rulemakings in progress is available at www.rrc.state.tx.us/rules/proposed.html.

The Commission proposes the repeal under Texas Natural Resources Code, §81.0531, which requires the Commission to adopt by rule guidelines to be used in determining the amount of the penalty for a violation of a provision of Title 3 of the Texas Natural Resources Code, or a rule, order, license, permit, or certificate that relates to pipeline safety; and Texas Utilities Code, §§121.201 - 121.210, which authorize the Commission to adopt safety standards and practices applicable to the transportation of gas and to associated pipeline facilities within Texas to the maximum degree permissible under, and to take any other requisite action in accordance with, 49 United States Code Annotated §§60101, *et seq*.

Texas Natural Resources Code, §81.0531; Texas Utilities Code, §§121.201 - 121.210; and 49 United States Code Annotated, §§60101, *et seq*., are affected by the proposed repeal.

Statutory authority: Texas Natural Resources Code, §81.0531; Texas Utilities Code, §§121.201 - 121.210; and 49 United States Code Annotated, §§60101, *et seq*.

Cross-reference to statute: Texas Natural Resources Code, §81.0531; Texas Utilities Code, Chapter 121; and 49 United States Code Annotated, Chapter 601.

Issued in Austin, Texas on October 9, 2007.

§8.245. Penalty Guidelines for Pipeline Safety Violations.
This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on October 9, 2007.

TRD-200704799
Mary Ross McDonald
Managing Director
Railroad Commission of Texas
Earliest possible date of adoption: November 25, 2007
For further information, please call: (512) 475-1295

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CHAPTER 9. LP-GAS SAFETY RULES

The Railroad Commission of Texas proposes amendments in 16 Texas Administrative Code, Chapter 9, Subchapter A, to §§9.1 - 9.3, new 9.4, amendments to §§9.7, 9.17, 9.21, 9.27, 9.28, new §9.32, amendments to §§9.35, 9.37, and 9.41, relating to Application of Rules, Severability, and Retroactivity; Definitions; LP-Gas Report Forms; Records and Enforcement; Application for License and License Renewal Requirements; Designation and Responsibilities of Company Representative and Operations Supervisor; Franchise Tax Certification and Assumed Name Certificates; Application for an Exception to a Safety Rule; Reasonable Safety Provisions; Consumer Safety Notification; Written Procedure for LP-Gas Leaks; Termination of LP-Gas Service; and Testing of LP-Gas Systems in School Facilities.

In Subchapter B, with a proposed new title of LP-Gas Installations, Containers, Appurtenances, and Equipment Requirements, the Commission proposes amendments to §§9.101, 9.114, 9.129, 9.130, 9.131, 9.134, 9.135, 9.136, 9.137, 9.140, 9.141, 9.142, and 9.143, relating to Filings Required for Stationary LP-Gas Installations; Odorizing and Reports; Manufacturer's Nameplate and Markings on ASME Containers; Commission Identification Nameplates; 200 PSIG Working Pressure Stationary Vessels; Connecting Container to Piping; Unsafe or Unapproved Containers, Cylinders, or Piping; Filling of DOT Containers; Inspection of Cylinders at Each Filling; Uniform Protection Standards; Uniform Safety Requirements; LP-Gas Container Storage and Installation Requirements; and Bulkhead, Internal Valve, and ESV Protection for Stationary LP-Gas Installations with Individual or Aggregate Water Capacities of 4,001 Gallons or More.

In Subchapter C, the Commission proposes amendments to §§9.206, 9.208, and 9.211, relating to Vehicle Identification Labels; Testing Requirements; and Markings.

In Subchapter D, the Commission proposes amendments to §§9.301, 9.302, 9.303, 9.306, 9.307, 9.308, 9.311, 9.312, and 9.313, relating to Adoption by Reference of NFPA 54; Clarification of Certain Terms Used in NFPA 54; Exclusion of NFPA, §6.31; Room Heaters in Public Buildings; Identification of Converted Appliances; Identification of Piping Installation; Special Exceptions for Agricultural and Industrial Structures Regarding Appliance Connectors and Piping Support; Certification Requirements for Joining Methods; and Sections in NFPA 54 Adopted with Corrections.

In Subchapter E, the Commission proposes amendments to §§9.401 - 9.403, relating to Adoption by Reference of NFPA 58; Clarification of Certain Terms Used in NFPA 58; and Sections in NFPA 58 Not Adopted by Reference, and Adopted with Changes, Additional Requirements, or Corrections.

The Commission's proposed amendments to §§9.2, 9.7, 9.17, 9.35, 9.41, 9.101, 9.135, 9.137, 9.140, 9.141, 9.143, 9.301, 9.313, 9.401, 9.401, and new §§9.4 and 9.32 are substantively different from the current requirements. In §9.2, the Commission proposes a new definition for "leak grades" to classify LP-gas leaks based on the danger it poses to life and property, and proposes a new definition for "self-service dispenser" used by ultimate consumers or licensees. In the definition of "transfer system," the Commission proposes to add pumps, compressors, and meters to the list of equipment to clarify the term and eliminate confusion caused by references to material handling equipment and dispensing system. The Commission proposes to broaden the definition of "ultimate consumer" to change "individual" to "person," as defined in §9.2, to include business and governmental entities.

Proposed new §9.4 addresses record keeping and enforcement issues. This section requires LP-gas licensees and registrants to retain certain documents for a specified time, and upon Commission request, make documents available for review and provide copies of documents. Proposed new subsection (b) would

require the Safety Division formulate a plan or program for the periodic evaluation of LP-gas facilities and clarifies the scope of activities permitted for an authorized representative of the Commission. Proposed new subsection (d) clarifies the obligations of licensees and registrants in cooperating with the Commission in the administration and enforcement of this chapter. The Commission finds that the record keeping requirements in new §9.4 replace the tagging requirements for containers or installations as required currently in §§9.141, 9.206, 9.307, and 9.307; the Commission has proposed in those sections to eliminate the tagging requirement as discussed in this preamble.

Proposed new wording in §9.17(a)(3) addresses situations where an operations supervisor manages more than one outlet and each outlet has an assigned certified employee responsible for the outlet. A telephone number posted at the outlet with the responsible certified employee's and/or operations supervisor's telephone number provides important contact information for the public and representatives of the Commission seeking information about the operation of the outlet. That individual must monitor the telephone number and respond to calls during normal business hours.

The Commission proposes new §9.32 to address the legislative mandate requiring the Commission to adopt rules relating the notice requirement in HB 1170. The proposed wording for the warning tag is specified in HB 1170.

The Commission proposes amendments to §9.35 to update a reference to a section in NFPA 58, and to clarify the leak grades defined by §9.2 and specify action criteria for responding to leaks. The new table provides some examples of the criteria.

In §9.41, the Commission proposes clarifying wording to require pressure tests to be performed by an LP-gas licensee, a master or journeyman plumber registered with the Commission, or if a school district employee performs the pressure test, that employee must be certified with the Commission. This requirement assures the Commission that school district personnel conducting pressure tests of systems at school facilities have passed an examination addressing applicable safety requirements.

The Commission proposes to change the title of Subchapter B to "LP-Gas Installations, Containers, Appurtenances, and Equipment Requirements" to better describe the rules included in that subchapter.

In §9.101(c)(1)(D), the Commission proposes to replace "material handling equipment" with "transfer system" to use the more accurate, defined term. The Commission also proposes some specific items to be included on the site plan. Additionally, in §9.101(c)(1)(E), the Commission proposes to require a copy of any permit required by the Texas Department of Transportation for transportation access to a public highway. In subsection (c)(2), a reference to a section in NFPA 58 is updated. In §9.137, the Commission proposes to change the word "cylinder" in the rule title to "container" to make the section more inclusive. Other proposed amendments update section references in NFPA 58, and clarify that an individual filling a container or cylinder must examine the container or cylinder for obvious defects before filling it. The 2008 edition of NFPA 58 includes ASME containers, and the proposed amendments make this section applicable to both ASME and DOT containers.

The Commission proposes several substantive amendments to 9.140. In subsections (a) and (b)(1), references to sections in NFPA 58 are updated; also in subsection (b)(1), the Commission proposes wording to allow options for fencing material where fencing is required at LP-gas facilities. This change will allow fencing material providing protection equivalent to that of chain link fencing, such as industrial or wrought iron fencing, after approval by the Safety Division. Some clarifying wording is proposed in §9.140(b)(4) to require gate posts be installed at 45 degree angles to the corner of a bulkhead to reduce the risk of transfer hoses binding on the gate posts in event of a pullaway incident. The change clarifies where gateposts are to be located in relation to a bulkhead. In §9.140(b)(5) and (7), references to "material handling equipment" are replaced with "the entire transfer system" for consistency.

Subsections (d), (d)(1), and (g) include changes to update the NFPA section references. In §9.140(d)(5), the Commission proposes a specific clearance requirement between a bulkhead and guard post to protect piping and transfer equipment against damage from vehicular traffic. Without a specific clearance, the opening between a bulkhead and a guard post may be large enough to allow a vehicle to enter the storage area and damage piping or transfer equipment.

In §9.140(g), the Commission proposed to update NFPA 58 references, and in subsection (g)(5) proposes new wording to explain the new item 13 in Table 1; item 13 specifies signage requirements for outlets where a certified employee is responsible for the outlet. Proposed amendments in subsection (g)(7) require licensees and non-licensees to comply with operational and/or procedural requirements specified by signage, such as extinguishing pilots, vacating vehicles, and not smoking. Proposed new (g)(8) clarifies requirements for the 24-hour emergency telephone number required by new item 12 in Table 1. The 24-hour emergency number must be monitored at all times and be answered by a person, not an answering machine or beeper device, who can provide LP-gas emergency response information or can immediately contact someone who can provide the information.

To prevent guard posts from being installed in contact with cylinder storage racks, the Commission proposes amendments in §9.140(h)(2)(A) and (B) to establish a minimum distance of 18 inches between a guard post and a cylinder storage rack, and to require guard posts to be securely anchored to a concrete driveway or concrete parking area. Proposed amendments in §9.140(h)(3) clarify the options for protecting cylinder storage racks against damage from vehicular traffic when guard posts are not utilized. Instead of guard posts, concrete curbs or concrete wheel stops may be used to provide protection if installed according to this section. The Commission proposes new subsection (h)(4) to require all parking wheel stops and cylinder storage racks to be secured against displacement.

The Commission proposes new §9.140(i) to provide specific requirements for protecting a self-service dispenser, as defined in §9.2, against vehicular damage. The provisions of this section provide options for protecting a self-service dispenser against damage from vehicles by allowing support columns, concrete barriers, bollards, and inverted u-shaped guard posts as protection instead of the guardrailing currently required in this chapter. However, additional safety measures apply when guardrailing is not utilized, for instance, the self-service dispenser must be equipped with a device to prevent the loss of gas in the event the dispenser is displaced, and the supply piping must be secured and installed in a manner to protect it against damage if the dispenser is displaced.

The wording in new subsection (j) is the same wording as in current subsection (h)(5), with the addition of self-service dis-

pensers. The subsection allows the Safety Division the discretion of requiring additional protection against damage to cylinder storage racks and self-service dispensers if the Division considers it warranted.

Proposed amendments in §9.141(a), (b), (e), and (f) update existing NFPA references with references from the 2008 edition of NFPA 58. Section 9.141(c) clarifies the requirements for locking handles on ball valves by specifying that if ball-type shutoff valves two inches and larger that do not have locking handles, the main shutoff valves on stationary containers shall remain closed until a transfer hose is properly connected or disconnected. Section 9.141(i) is removed, which eliminates the requirement for attaching a decal or metal tag on a container to identify the installer. The requirement to place a tag or decal on a container with the installer's information did not enhance the safety aspects of the LP-gas installation. LP-gas installations without an installer's decal or tag are no less safe than installations with a decal or tag. Often, due to weathering or tampering a decal or tag that had been affixed to a container would become detached and be lost. The decal or tagging requirement provided the Commission with information for administering and enforcing the LP-gas safety rules. Currently, for non-residential installations, this information is obtained by the filing of a completion report with the Commission. For both residential and non-residential installations, the record keeping requirements in proposed new §9.4 provide the Commission with needed information previously provided by a decal or tag.

The Commission proposes some substantive amendments in §9.143, including a deadline for certain equipment to be replaced. The Commission proposes to add "API 607 Ball Valves" to the title of the rule; the 2008 edition of NFPA 58 allows the use of API 607 ball valves, utilizing an excess flow valve, in container openings that are not compatible with internal valves. Adding the use of this valve provides an option to the current safety rule requiring the installation of an excess flow valve, manual shutoff valve and an ESV when a container's opening is not compatible for installation of an internal valve. Other proposed amendments in subsections (a), (b), (e), and (g) update NFPA references.

In §9.143(a), the Commission proposes wording to allow the use of API 607 ball valves and adds requirements for backflow check valves. Proposed amendments in §9.143(a)(1) specifies the location of a backflow check valve installed in the fixed piping at a bulkhead, and in subsection (a)(2)and (5) adds a reference to API 607 ball valves. The Commission proposes in subsection (a)(3) to clarify the location of thermal elements required on ESVs, internal valves, and API 607 ball valves. In §9.143(c), the Commission proposes to clarify the use of ESVs and backflow check valves at existing installations with horizontal bulkheads.

The Commission also proposes that all cable-actuated ESVs be replaced with pneumatically-operated ESVs by January 1, 2011. The Commission finds that this time period is reasonable because only about five percent of current LP-gas installations still use cable-actuated ESVs. The rule already requires these to be replaced with pneumatically-operated ESVs if any repair or maintenance is required.

In §9.143(e), the Commission adds a reference to the API 607 valves and clarifies the distance requirements for installation of remote emergency shutoffs. Proposed amendments in §9.143(i) specify requirements for locating remote emergency shutoff device when containers are filled through a filler valve installed directly in the tank instead of through a bulkhead.

The other substantive amendments the Commission proposes concern the adoption by reference of the 2006 edition of NFPA 54 and the 2008 edition of NFPA 58, effective February 1, 2008; these adoptions will establish consistent requirements for Texas LP-gas licensees and consumers with most other states in the United States. Because NFPA 54 and NFPA 58 have been adopted in whole or in part by most other states in the United States, the Texas LP-gas industry benefit from these adoptions because Texas companies would be held to the same standards when doing business in other states; therefore, LP-gas companies wishing to expand their businesses to other states would have a better opportunity to do so.

The Commission proposes adoption of the 2006 edition of NFPA 54 to update the 1999 edition of NFPA 54 currently adopted. The Commission also proposes to adopt by reference all other NFPA publications or portions of those publication referenced in NFPA 54 which apply to LP-gas activities only. In other words, if other LP-gas activities are to be performed by a licensee and those activities are included in an NFPA publication referenced in NFPA 54, then the licensee shall perform those activities in compliance with the referenced document. The proposed amendments in §9.301 update the NFPA publications and edition dates. The Commission proposes amendments in §9.313 to specify some sections in NFPA 54 for which the Commission proposes to adopt additional language and one section that the Commission does not adopt; these sections are indicated in the new table in §9.313.

The Commission proposes to adopt the 2008 edition of NFPA 58 in §9.401, with certain clarifications described in §9.402 and §9.403. The Commission also proposes to adopt by reference all other NFPA publications or portions of those publications referenced in NFPA 58 which apply to LP-gas activities only. In other words, if other LP-gas activities are to be performed by a licensee and those activities are included in an NFPA publication referenced in NFPA 58, then the licensee shall perform those activities in compliance with the referenced document. For example, §6.22.22 of NFPA 58 refers to another NFPA publication, NFPA 70, National Electrical Code . Licensees who will be performing LP-gas activities authorized in §6.22.22 shall also be required to purchase that NFPA publication and perform the work to those standards.

Similar to the current adoption by reference of the 2001 edition of NFPA 58, there are some sections in the 2008 edition of NFPA 58 for which the Commission proposes to adopt alternative or additional language, or which the Commission does not adopt; these sections are indicated in the table in 9.403. Most of the changes from the 2001 edition of NFPA 58 concern section number changes, but two sections are somewhat substantively different from the current adopted requirement. In NFPA 58, section 2.3.3.2(b)(2) changed to section 5.7.4.2 and includes paragraph (e) allowing only one bushing to be used for reducing the size of a container opening and paragraph (f) allowing the use of API 607 ball valves in container openings that are not compatible with internal valves. Also, section 8.2.3(l) requiring special provisions for the use of overfilling prevention devices on engine fuel containers when the container's fixed liquid level gauge is not used during filling has been removed and the Commission proposes to adopt the provisions of section 11.4.1.15 in the 2008 edition of NFPA 48 as a whole. Other changes are nonsubstantive; many of these are changes to NFPA 58 references to containers of less than one gallon, which are exempted by Chapter 113 of the Texas Natural Resources Code.

Some of the provisions in NFPA 58 are different from what is currently in the LP-Gas Safety Rules or the 2001 edition of NFPA 58. For example, current Commission §9.403, in the reference to NFPA 58 §8.2.3(1), requires venting of gas through a fixed liquid level gauge on engine fuel containers equipped with an overfilling device unless specific provisions are followed. However, NFPA 58 §11.4.1.15 does not require venting of gas through a fixed maximum liquid level gauge during filling if an engine fuel container is equipped with an overfilling device.

Other proposed amendments in §§9.3, 9.27, 9.28, 9.129, 9.130, 9.134, 9.206, 9.208, 9.307, and 9.308 are somewhat substantive, but should not have a major effect. In §9.3 and §9.7(f)(2)(D), the Commission proposes to delete references to LPG Form 26, which is no longer necessary. The Commission clarifies in §9.27 the reference to a non-stationary site, which is not a defined term, to "motor or mobile fuel installation." In §9.28, the Commission proposes to delete the word "stationary" so that the reasonable safety provisions in this rule apply to any LP-gas installation covered by Chapter 9. In §9.129, the Commission proposes new subsection (e)(12) - (14) to conform with NFPA 58 §5.2.8.3(c). The Commission proposes new wording in §9.130 to require clear photographs of specific areas on a container. The Commission deletes the use of sketches because they were often unclear or unreadable. In §9.134, the Commission clarifies who is authorized to install piping by adding registrants authorized by §9.13 of this chapter, or individuals exempted from licensing as authorized by Texas Natural Resources Code, §113.081. In §§9.206, 9.307, and 9.308, the Commission proposes to delete the requirement for tagging containers and piping, and updates NFPA 58 references. The Commission clarifies in §9.208 who is authorized to perform testing on transport containers by adding individuals authorized by the United States Department of Transportation to conduct such tests. In §9.308, the Commission adds wording that documentation of pressure and leakage testing be retained by registrants and licensees, as specified in new §9.4.

Finally, proposed amendments in §§9.1, 9.7, 9.21, and 9.37 are nonsubstantive and are made for clarification. The amendment in §9.1 corrects a cross-reference to Chapter 9; the proposed language added in §9.7 clarifies existing requirements. The change in §9.21 refers to information the Commission obtains from the Comptroller's office, which is no longer necessary for licensees to provide. The proposed amendment in §9.37 gives the Safety Division an option to affix a warning tag to remove a hazardous container or installation from service. Sections for which the only proposed amendments are updates to NFPA 58 sections include §§9.114, 9.131, 9.135, 9.136, 9.142, 9.211, 9.302, 9.303, 9.306, 9.311, and 9.312.

James Osterhaus, Deputy Director, Safety Division, has determined that for each of the first five years the proposed amendments and new sections will be in effect there will be minor fiscal implications for state government. For the Commission, these will involve publication and distribution of new rule books, revising rules examinations, reprogramming various computer generated reports and databases, and retraining staff, including field inspectors. A complete set of NFPA 54 and all 15 other referenced publications currently costs $537.00 and a complete set of NFPA 58 and all 16 other references publications currently costs $695.50.

Mr. Osterhaus has determined that there may be fiscal implications for local governments. Some school districts may experience some costs pursuant to the proposed amendments in §9.41 to require either a licensee or licensee employee, a master or journeyman plumber registered with the Commission, or a school employee who has been certified by the Commission to perform this activity. A school district would incur costs only if it uses its own employees to perform the required bi-annual testing. Under the current rules examination and training rules, the cost per employee would be a initial $75.00 class fee and $35.00 test fee, as well as a $35.00 annual registration fee. The school districts may also need to purchase an LP-gas rule book ($7.00), and an NFPA 54 book ($42.50), if the school district chooses to purchase these books instead of reviewing the rules on-line at the Commission's or the NFPA websites. Additionally, school district's certified employees must attend a Commission continuing education course once every four years; there is no fee for this course.

Mr. Osterhaus has also determined that for each year of the first five years the sections as proposed will be in effect the public benefit anticipated as a result of administering or enforcing the sections will be improvement in safety due to more specific requirements for the LP-gas industry. Individuals in the LP-gas industry should also see some benefits when dealing with other states, which have adopted NFPA 54 and NFPA 58.

Texas Government Code, §2006.002 requires a state agency considering adoption of a rule that would have an adverse economic effect on small businesses or micro-businesses to reduce the effect if doing so is legal and feasible considering the purpose of the statutes under which the rule is to be adopted. The Commission assumes that there are LP-gas licensees or examination applicants that meet the definitions of "micro-business" and "small business" set forth in Texas Government Code, §2006.001(1) and (2), respectively; however, the Commission has no data on these businesses' growth rates, employee turnover rates, career-ladder programs, or other internal factors that could require some of the businesses' employees to take new rules examinations. Further, the Commission does not have information on these businesses' gross receipts, sales revenues, or labor costs. Therefore, the Commission is not able to determine the exact cost of compliance based on the cost for each employee, the cost for each hour of labor, or the cost for each $100 of sales pursuant to Texas Government Code, §2006.002(c). Finally, pursuant to Texas Government Code, §2006.002, the Commission finds that, considering the purpose of Texas Natural Resources Code, Chapter 113, which is to protect the health, welfare, and safety of the general public through the Commission's promulgation and adoption of rules and standards relating to all aspects of the LPG industry, including training, continuing education, and examination requirements, it is not feasible to reduce any adverse effect the proposed amendments could have on individuals, small businesses, or micro-businesses.

The following paragraphs describe the costs of compliance that licensees and registrants are likely to incur. Pursuant to Texas Government Code, §2006.002(c), Mr. Osterhaus has determined that there will be some costs of compliance related to the NFPA 54 and NFPA 58 adoption to an estimated 2,165 licensees and 3,334 individual that are registrants and are required to comply with NFPA 54 and/or NFPA 58. These will include the cost for the Commission's rule book, and copies of NFPA 54 and NFPA 58 and other referenced pamphlets that will have to be purchased directly from NFPA or other entities. An average cost to an individual, small business, or micro-business required to comply with the proposed rules is estimated to be about $172.00; this figure, includes the approximate cost for a new Commission rule book ($7), one copy of NFPA 58 ($42.50)

and its referenced pamphlets ($40), and one copy of NFPA 54 ($42.50) and its referenced pamphlets ($40). The number of publications a licensee or registrant may need to purchase will vary and will depend on the LP-gas activities performed by the licensee or registrant. The majority of the 3,334 individuals who are registrants will be engaged in LP-gas activities requiring only a copy of the NFPA 54 and perhaps one other publication. The estimated costs to these individuals, including the cost of a Commission rule book, would be $89.50. Given the 2,165 licensees and 3,334 individuals that are registrants and are required to comply with the LP-Gas Safety Rules, NFPA 54 and/or NFPA 58, the total estimated economic impact to the industry would be $670,773. The table indicates some of the current costs for the NFPA books:

Figure: 16 TAC Chapter 9 - Preamble

Some installations will be affected by the proposed amendments in §9.143(c)(2) that require installations with cable-actuated ESVs to replace those with pneumatically-operated ESVs by January 1, 2011. The Commission estimates that out of approximately 994 bulk storage facilities and 106 loading rack facilities, only about five percent would be required to comply with this retrofit. The cost to replace a cable-actuated valve with a pneumatically-operated one is about $350.

Comments on the proposal may be submitted to Rules Coordinator, Office of General Counsel, Railroad Commission of Texas, P.O. Box 12967, Austin, Texas 78711-2967; online at www.rrc.state.tx.us/rules/commentform.html; or by electronic mail to rulescoordinator@rrc.state.tx.us. Comments should refer to LPG Docket No. 1936, and will be accepted until 5:00 p.m. on Monday, November 26, 2007, which is 31 days after publication in the *Texas Register*. The Commission finds that this comment period is reasonable because the proposal as well as an online comment form will be available on the Commission's web site no later than the day after the open meeting at which the Commission approves publication of the proposal, giving interested persons over two additional weeks to review, analyze, draft, and submit comments. The Commission encourages all interested persons to submit comments no later than the deadline. The Commission cannot guarantee that comments submitted after the deadline will be considered. For further information, call Mr. Osterhaus at (512) 463-6692. The status of Commission rulemakings in progress is available at www.rrc.state.tx.us/rules/proposed.html.

SUBCHAPTER A. GENERAL REQUIREMENTS

16 TAC §§9.1 - 9.4, 9.7, 9.17, 9.21, 9.27, 9.28, 9.32, 9.35, 9.37, 9.41

The amendments and new rules are proposed under the Texas Natural Resources Code, §113.051, which authorizes the Commission to adopt rules relating to any and all aspects or phases of the LP-gas industry that will protect or tend to protect the health, welfare, and safety of the general public; and §113.052, which allows the Commission to adopt by reference the published codes of nationally recognized societies, including the National Fire Protection Association.

The Texas Natural Resources Code, §113.051 and §113.052, are affected by the proposed amendments and new rules.

Issued in Austin, Texas, on October 9, 2007.

§9.1. Application of Rules, Severability, and Retroactivity.

(a) The LP-Gas Safety Rules apply to the location and operation of liquefied petroleum gas systems, equipment, and appliances. These standards also apply to truck and railcar loading racks, but do not apply to marine terminals, natural gasoline plants, refineries, tank farms, gas manufacturing plants, plants engaged in processing liquefied petroleum gases, or to railcar loading racks used in connection with these excluded establishments.

(1) (No change.)

(2) Subchapter B, LP-Gas Installations, Containers, Appurtenances, and Equipment [~~Stationary Installations and Container~~] Requirements, applies to proposed and existing [~~stationary~~] LP-gas installations, [~~and~~] containers, and equipment, including cylinder exchange racks.

(3) - (5) (No change.)

(b) - (f) (No change.)

(g) Vehicles and fuel supply containers excluded from the requirements of this chapter pursuant to subsection (f) of this section shall comply with the requirements of §9.203 of this title, relating to School Bus, Public Transportation, Mass Transit, and Special Transit Vehicle Installations and Inspections, and the Commission's exception to NFPA 58 §11.4.1.5 [~~§8.2.3(l)~~] in Table 1 in §§9.403(a), relating to Sections in NFPA 58 Not Adopted by Reference, and Adopted with Changes or [~~,~~] Additional Requirements[~~, or Corrections~~].

§9.2. Definitions.

In addition to the definitions in any adopted NFPA pamphlets, the following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) - (19) (No change.)

(20) Leak grades--An LP-gas leak that is:

(A) a Grade 1 leak that represents an existing or probable hazard to persons or property, and requires immediate repair or continuous action until the conditions are no longer hazardous; or

(B) a Grade 2 leak that is recognized as being nonhazardous at the time of detection, but requires a scheduled repair based on a probable future hazard.

(21) [~~(20)~~] Licensed--Authorized to perform LP-gas activities through the issuance of a valid license.

(22) [~~(21)~~] Licensee--A person which has applied for and been granted an LP-gas license by the Commission, or who holds a master or journeyman plumber license from the Texas State Board of Plumbing Examiners or a Class A or B Air Conditioning and Refrigeration Contractors License from the Texas Department of Licensing and Regulation and has properly registered with the Commission.

(23) [~~(22)~~] LP-Gas Safety Rules--The rules adopted by the Railroad Commission in the Texas Administrative Code, Title 16, Part 1, Chapter 9, including any NFPA or other documents adopted by reference. The official text of the Commission's rules is that which is on file with the Secretary of State's office and available at www.sos.state.tx.us or through the Commission's web site at www.rrc.state.tx.us.

(24) [~~(23)~~] LP-gas system--All piping, fittings, valves, and equipment, excluding containers and appliances, that connect one or more containers to one or more appliances that use or consume LP-gas.

(25) [~~(24)~~] Mass transit vehicle--Any vehicle which is owned or operated by a political subdivision of a state, city, or county, used primarily in the conveyance of the general public.

(26) [~~(25)~~] Mobile fuel container--An LP-gas container mounted on a vehicle to store LP-gas as the fuel supply to an auxiliary engine other than the engine to propel the vehicle or for other uses on the vehicle.

(27) [~~(26)~~] Mobile fuel system--An LP-gas system, excluding the container, to supply LP-gas as a fuel to an auxiliary engine other than the engine to propel the vehicle or for other uses on the vehicle.

(28) [~~(27)~~] Motor fuel container--An LP-gas container mounted on a vehicle to store LP-gas as the fuel supply to an engine used to propel the vehicle.

(29) [~~(28)~~] Motor fuel system--An LP-gas system, excluding the container, which supplies LP-gas to an engine used to propel the vehicle.

(30) [~~(29)~~] MPS gas (Methylacetylene-propadiene, stabilized)--A mixture of gases in the liquid phase and as defined in Texas Natural Resources Code, Chapter 113, §113.002(4).

(31) [~~(30)~~] Noncorrosive--Corrosiveness of gas which does not exceed the limitation for Classification 1 of the American Society of Testing Material (ASTM) Copper Strip Classifications when tested in accordance with ASTM D 1834-64, "Copper Strip Corrosion of Liquefied Petroleum (LP) Gases."

(32) [~~(31)~~] Nonspecification unit--An LP-gas transport not constructed to DOT MC-330 or MC-331 specifications but which complies with the exemption in 49 Code of Federal Regulations §173.315(k). (See also "Specification unit" in this section.)

(33) [~~(32)~~] Operations supervisor--The individual who is certified by the Commission to actively supervise a licensee's LP-gas operations and is authorized by the licensee to implement operational changes.

(34) [~~(33)~~] Outlet--A site operated by an LP-gas licensee from which any regulated LP-gas activity is performed.

(35) [~~(34)~~] Outside instructor--An individual, other than a Commission employee, approved by AFRED to teach certain LP-gas training or continuing education courses.

(36) [~~(35)~~] Person--An individual, partnership, firm, corporation, joint venture, association, or any other business entity, a state agency or institution, county, municipality, school district, or other governmental subdivision, or licensee, including the definition of "person" as defined in the applicable sections of 49 CFR relating to cargo tank hazardous material regulations.

(37) [~~(36)~~] Portable cylinder--A receptacle constructed to DOT specifications, designed to be moved readily, and used for the storage of LP-gas for connection to an appliance or an LP-gas system. The term does not include a cylinder designed for use on a forklift or similar equipment.

(38) [~~(37)~~] Property line--The boundary which designates the point at which one real property interest ends and another begins.

(39) [~~(38)~~] Public transportation vehicle--A vehicle for hire to transport persons, including but not limited to taxis, buses (excluding school buses and mass transit or special transit vehicles), or airport courtesy vehicles.

(40) [~~(39)~~] Recreational vehicle--A vehicular-type unit primarily designed as temporary living quarters for recreational, camping, travel, or seasonal use that either has its own motive power or is mounted on, or towed by, another vehicle.

(41) [~~(40)~~] Register (or registration)--The procedure to inform the Commission of the use of an LP-gas transport or container delivery unit in Texas.

(42) [~~(41)~~] Repair to container--The correction of damage or deterioration to an LP-gas container, the alteration of the structure of such a container, or the welding on such container in a manner which causes the temperature of the container to rise above 400 degrees Fahrenheit.

(43) [~~(42)~~] Rules examination--The Commission's written examination that measures an examinee's working knowledge of Chapter 113 of the Texas Natural Resources Code and/or the current LP-Gas Safety Rules.

(44) [~~(43)~~] School--A public or private institution which has been accredited through the Texas Education Agency or the Texas Private School Accreditation Commission.

(45) [~~(44)~~] School bus--A vehicle that is sold or used for purposes that include carrying students to and from school or related events.

(46) Self-service dispenser--A listed device or approved equipment in a structured cabinet for dispensing and metering LP-gas between containers that must be accessed by means of a locking device such as a key, card, code, or electronic lock, and which is operated by a certified employee of an LP-gas licensee or an ultimate consumer trained by an LP-gas licensee.

(47) [~~(45)~~] Special transit vehicle--A vehicle designed with limited passenger capacity which is used by a school or mass transit authority for special transit purposes, such as transport of mobility impaired persons.

(48) [~~(46)~~] Specification unit--An LP-gas transport constructed to DOT MC-330 or MC-331 specifications. (See also "Nonspecification unit" in this section.)

(49) [~~(47)~~] Subframing--The attachment of supporting structural members to the pads of a container, excluding welding directly to or on the container.

(50) [~~(48)~~] Trainee--An individual who has not yet taken and passed an employee-level rules examination.

(51) [~~(49)~~] Training--Courses required to be successfully completed as part of an individual's requirements to obtain or maintain certain certificates.

(52) [~~(50)~~] Transfer--The procedure to inform the Commission of a change in operator of an LP-gas transport or container delivery unit already registered with the Commission.

(53) [~~(51)~~] Transfer system--All piping, fittings, valves, pumps, compressors, meters, hoses, and equipment utilized in dispensing LP-gas between containers.

(54) [~~(52)~~] Transport--Any bobtail or semitrailer equipped with one or more containers.

(55) [~~(53)~~] Transport driver--An individual who operates an LP-gas trailer or semi-trailer equipped with a container of more than 5,000 gallons water capacity.

(56) [~~(54)~~] Transport system--Any and all piping, fittings, valves, and equipment on a transport, excluding the container.

(57) [~~(55)~~] Ultimate consumer--The person [~~individual~~] controlling LP-gas immediately prior to its ignition.

§9.3. LP-Gas Report Forms.

Under the provision of the Texas Natural Resources Code, Chapter 113, the Railroad Commission of Texas has adopted the following forms.

(1) - (21) (No change.)

[~~(22) LPG Form 26. Franchise Tax Certification.~~]

(22) [~~(23)~~] LPG Form 28. Notice of Election to Self-Insure Per Rule 9.26.

(23) [~~(24)~~] LPG Form 28A. Bank Declarations Regarding Irrevocable Letter of Credit.

(24) [~~(25)~~] LPG Form 500. Application for Installation.

(25) [~~(26)~~] LPG Form 500A. Notice of Proposed LP-Gas Installation.

(26) [~~(27)~~] LPG Form 501. Completion Report for Commercial Installations of Less than 10,000 Gallons Aggregate Water Capacity.

(27) [~~(28)~~] LPG Form 502. Request for Commission Identification Nameplate.

(28) [~~(29)~~] LPG Form 503. Request for Inspection of an LP-Gas System on School Bus, Public Transportation, Mass Transit, or Special Transit Vehicles.

(29) [~~(30)~~] LPG Form 505. Testing Procedures Certification for Category B and O Licenses.

(30) [~~(31)~~] LPG Form 506. Polyethylene Pipe/Tubing Heat-Fusion Certification.

(31) [~~(32)~~] LPG Form 995. Certification of Political Subdivision of Self-Insurance for General Liability, Workers' Compensation, and/or Motor Vehicle Liability Insurance.

(32) [~~(33)~~] LPG Form 996A. Certificate of Insurance, Workers' Compensation and Employer's Liability or Alternative Accident/Health Insurance.

(33) [~~(34)~~] LPG Form 996B. Statement in Lieu of Insurance Filing Certifying Workers' Compensation Coverage, including Employer's Liability Insurance or Alternative Accident/Health Insurance.

(34) [~~(35)~~] LPG Form 997A. Certificate of Insurance, Motor Vehicle Bodily Injury, and Property Damage Liability.

(35) [~~(36)~~] LPG Form 997B. Statement in Lieu of Motor Vehicle Bodily Injury, and Property Damage Liability Insurance.

(36) [~~(37)~~] LPG 998A. Certificate of Insurance, General Liability.

(37) [~~(38)~~] LPG 998B. Statement in Lieu of General Liability Insurance and/or Completed Operations or Products Liability Insurance.

(38) [~~(39)~~] LPG Form 999. Notice of Insurance Cancellation.

§9.4. Records and Enforcement.

(a) Records. Each LP-gas licensee or registrant shall retain:

(1) records of pressure tests and leakage tests for at least five years;

(2) a copy of all documentation submitted for an exception to an LP-gas rule pursuant to §9.27 of this title (relating to Application for an Exception to a Safety Rule), including the Commission's memorandum granting the exception, for as long as the exception is in use; and

(3) a copy of all customer records for at least five years.

(b) Periodic inspection. The Safety Division shall formulate a plan or program for periodic evaluation or inspection of records and facilities owned, operated, or serviced by LP-gas licenses or registrants for the purpose of verifying compliance with this chapter.

(c) Scope of inspection. During normal business hours, an authorized representative of the Commission may, at any reasonable time, inspect the files, records, reports, documents, equipment, transports, and facilities of an LP-gas licensee for the purpose of verifying compliance with this chapter.

(d) Licensee and registrant obligations.

(1) A registrant, officer, employee, or representative of an LP-gas licensee shall cooperate with the Commission and its authorized representatives in the administration and enforcement of the provisions in this chapter, in the determination of compliance with the provisions of this chapter, and in the investigation of violations, complaints alleging violations, and accidents or incidents involving LP-gas.

(2) A registrant, officer, employee, or representative of an LP-gas licensee shall make readily available all files, records, reports, documents and information, and shall make readily accessible all company equipment, property, and facilities as the Commission or its authorized representative may reasonably require in the administration and enforcement of this chapter, and in the investigation of violations, complaints alleging violations, and accidents or incidents involving LP-gas.

(3) Upon request by an authorized representative of the Commission, an LP-gas licensee's officer, employee, or representative, or a registrant shall provide copies of records, files, reports, documents, and information for administration and enforcement of this chapter.

§9.7. Application for License and License Renewal Requirements.

(a) No person shall perform work, directly supervise LP-gas activities, or be employed in any capacity requiring contact with LP-gas unless:

(1) - (4) (No change.)

(b) A person exempt from licensing as authorized by Texas Natural Resources Code, §113.081(b), shall not engage in any LP-gas activities in commerce or in business without first obtaining a license.

(c) A state agency or institution, county, municipality, school district, or other governmental subdivision that is exempt from licensing requirements as provided in §113.081(g) shall not engage in business or commerce pertaining to LP-gas activities without first obtaining a license.

(d) [~~(b)~~] Licensees, company representatives, and operations supervisors at each outlet shall have copies of all current licenses and certification cards for employees at that location available for inspection during regular business hours. In addition, licensees shall maintain a current version of the LP-Gas Safety Rules and shall provide at least one copy to each company representative and operations supervisor. The copies shall be available to employees during business hours.

(e) [~~(c)~~] Licenses issued under this chapter expire one year after issuance at midnight on the last day of the month prior to the month in which they are issued.

(f) [~~(d)~~] An applicant for a new license shall file with the License and Permit Section of the Gas Services Division (the Section):

(1) a properly completed LPG Form 1 listing all names under which LP-gas related activities requiring licensing are to be conducted and, for licensees engaging in LP-gas product activities as defined in Texas Natural Resources Code, §113.081(a)(4), including a

24-hour emergency response telephone number. Any company performing LP-gas activities under an assumed name ("DBA" or "doing business as" name) shall file copies of the assumed name certificates which are required to be filed with the respective county clerk's office and/or the Secretary of State's office with the Section; and

(2) LPG Form 16 or 16B and any of the following applicable forms:

(A) LPG Form 1A if the applicant will establish any outlets;

(B) LPG Form 7 and any information requested in §9.202 of this title (relating to Registration and Transfer of LP-Gas Transports or Container Delivery Units) if the applicant intends to register any LP-gas transports or container delivery units;

(C) LPG Form 19 if the applicant will be transferring the operation of an existing bulk plant, service station, cylinder filling, or portable cylinder exchange rack installation from another owner or name;

[~~(D) LPG Form 26 if the applicant for license is a corporation or limited liability company; and the applicant shall also comply with §9.21 of this title (relating to Franchise Tax Certification and Assumed Name Certificates);~~]

(D) [~~(E)~~] LPG Form 996A or 996B if the applicant is required to carry workers' compensation; and the applicant shall also comply with §9.26 of this title (relating to Insurance Requirements);

(E) [~~(F)~~] LPG Form 997A or 997B if the applicant will operate a transport or container delivery unit; and the applicant shall also comply with §9.26; and/or

(F) [~~(G)~~] LPG Form 998A or 998B if the applicant is required to carry general liability; and the applicant shall also comply with §9.26;

(3) pay the following fees:

(A) the applicable license fee specified in §9.6 of this title (relating to Licenses and Fees);

(B) transport registration fees specified in §9.202 of this title (relating to Registration and Transfer of LP-Gas Transports or Container Delivery Units), if the applicant for license intends to operate a transport or container delivery unit; and

(C) the nonrefundable management-level rules examination fee specified in §9.10 of this title (relating to Rules Examination); and

(D) the nonrefundable fee for any required training course as specified in §9.51 of this title (relating to General Requirements for Training and Continuing Education).

(g) [~~(e)~~] An applicant for license shall not engage in LP-gas activities governed by the Texas Natural Resources Code, Chapter 113, and the LP-Gas Safety Rules, until it has employed a company representative and/or operations supervisor who has passed the management-level rules examination specified in §9.10 of this title (relating to Rules Examination) with a score of at least 75% and who has completed any required training in §9.51 and §9.52 of this title (relating to General Requirements for Training and Continuing Education; and Training and Continuing Education Courses), or who has obtained a General Installers and Repairman Exemption as specified in §9.13 of this title (relating to General Installers and Repairman Exemption). Company representatives and operations supervisors shall also comply with §9.17 of this title (relating to Designation and Responsibilities of Company Representatives and Operations Supervisors).

(h) [~~(f)~~] For license renewals, the Section shall notify the licensee in writing at the address on file with the Section of the impending license expiration at least 30 calendar days before the date a person's license is scheduled to expire. The renewal notice shall include copies of LPG Forms 1, 1A, and 7, [~~and 26,~~] whichever are applicable, showing the information currently on file. Renewals shall be submitted to the Section with any necessary changes clearly marked on the forms. Licensees engaging in LP-gas product activities as defined in Texas Natural Resources Code, §113.081(a)(4), shall include on LPG Form 1 a 24-hour emergency response telephone number, if not previously submitted, along with the license renewal fee specified in §9.6 of this title (relating to Licenses and Fees) and any applicable transport registration fee specified in §9.202 of this title (relating to Registration and Transfer of LP-Gas Transports or Container Delivery Units) on or before the last day of the month in which the license expires in order for the licensee to continue LP-gas activities. Failure to meet the renewal deadline set forth in this section shall result in expiration of the license. If a person's license expires, that person shall immediately cease performance of any LP-gas activities authorized by the license. After verification, if the licensee has met all other requirements for licensing, the Section shall renew the license, and the person may resume LP-gas activities.

(1) If a person's license has been expired for 90 calendar days or fewer, the person shall submit a renewal fee that is equal to 1 1/2 times the renewal fee required by §9.6 of this title (relating to Licenses and Fees). Upon receipt of the renewal fee, the Section shall verify that the person's license has not been suspended, revoked, or expired for more than one year. After verification, if the licensee has met all other requirements for licensing, the Section shall renew the license, and the person may resume LP-gas activities.

(2) If a person's license has been expired for more than 90 calendar days but less than one year, the person shall submit a renewal fee that is equal to two times the renewal fee required by §9.6 of this title. Upon receipt of the renewal fee, the Section shall verify that the person's license has not been suspended, revoked, or expired for more than one year. After verification, if the licensee has met all other requirements for licensing, the Section shall renew the license, and the person may resume LP-gas related activities.

(3) If a person's license has been expired for one year or more, that person shall not renew, but shall comply with the requirements for issuance of an original license.

(4) A person who was licensed in this state, moved to another state, and is currently licensed and has been in practice in the other state for the two years preceding the date of application may obtain a new license without reexamination. The person shall pay to the Section a fee that is equal to two times the renewal fee required by §9.6 of this title.

(A) As a prerequisite to licensing pursuant to this provision, the person shall submit, in addition to an application for licensing, proof of having been in practice and licensed in good standing in another state continuously for the two years immediately preceding the filing of the application;

(B) A person licensed under this provision shall be required to comply with all requirements of licensing other than the examination requirement, including but not limited to the insurance requirements as specified in §9.26 of this title (relating to Insurance Requirements) and the continuing education and training requirements as specified in §9.51 of this title (relating to General Requirements for Training and Continuing Education).

(i) [~~(g)~~] Applicants for license or license renewal in the following categories shall comply with these additional requirements:

(1) An applicant for a Category A license or renewal shall file with the Section for each of its outlets legible copies of:

(A) its current Department of Transportation (DOT) authorization. A licensee shall not continue to operate after the expiration date of the DOT authorization; and/or

(B) its current American Society of Mechanical Engineers (ASME) Code, Section VIII certificate of authorization.

(2) An applicant for a Category B or O license or renewal shall file with the Section a properly completed LPG Form 505 certifying that the applicant will follow the testing procedures indicated. The company representative designated on the licensee's LPG Form 1 shall sign the LPG Form 505.

(3) An applicant for Category A, B, or O license or renewal who tests tanks, subframes LP-gas cargo tanks, or performs other activities requiring DOT registration shall file with the Section a copy of any applicable current DOT registrations. Such registration shall comply with Title 49, Code of Federal Regulations, Part 107 (Hazardous Materials Program Procedures), Subpart F (Registration of Cargo Tank and Cargo Tank Motor Vehicle Manufacturers and Repairers and Cargo Tank Motor Vehicle Assemblers).

§9.17. Designation and Responsibilities of Company Representatives and Operations Supervisors.

(a) Each licensee shall have at least one company representative for the license and, in the case of a licensee other than a Category P licensee, at least one operations supervisor for each outlet.

(1) - (2) (No change.)

(3) An individual may be operations supervisor at more than one outlet provided that:

(A) each outlet has a designated LP-gas certified employee [~~who is~~] responsible for the LP-gas activities at that outlet;

(B) the certified employee's and/or operations supervisor's telephone number is posted at the outlet on [~~and that~~] a sign with lettering at least 3/4-inch high, visible and legible at all times; and

(C) the certified employee and/or the operations supervisor monitors the telephone number and responds to calls during normal business hours [~~, with 24-hour emergency response telephone number be posted at that outlet~~].

(4) - (5) (No change.)

(b) - (g) (No change.)

§9.21. Franchise Tax Certification and Assumed Name Certificates.

(a) An applicant for an original or renewal license that is a corporation or limited liability company shall be in good standing with the Office of the Comptroller of Public Accounts of the State of Texas [~~file LPG Form 26 with the License and Permit Section of the Gas Services Division (the Section), prior to the issuance of such license, certifying that its Texas franchise taxes are current or such taxes are not applicable to the company. An applicant may file a Certificate of Account Status issued by the Office of the Comptroller of Public Accounts with the Section as an alternative to filing the LPG Form 26~~].

(b) (No change.)

§9.27. Application for an Exception to a Safety Rule.

(a) - (b) (No change.)

(c) Notice of the application for an exception to a safety rule.

(1) - (2) (No change.)

(3) If an exception is requested for a motor or mobile fuel installation [~~nonstationary site~~], affected entities to whom the applicant shall give notice shall include but not be limited to:

(A) - (B) (No change.)

(4) (No change.)

(d) - (i) (No change.)

§9.28. Reasonable Safety Provisions.

If an LP-gas [~~stationary~~] installation, equipment, or appurtenances not specifically covered by the LP-Gas Safety Rules has been or will be installed, the Safety Division shall apply and require any reasonable safety provisions to ensure the LP-gas installation is safe for LP-gas service. If the affected entity disagrees with the Division's determination, the entity may request a hearing. The installation shall not be placed into LP-gas operation until the Commission has determined that the installation is safe for LP-gas service.

§9.32. Consumer Safety Notification.

(a) A person holding a license to install or repair an LP-gas system who sells, installs, or repairs an LP-gas system, piping, or other equipment that is part of a system, or an appliance that is connected or attached to a system shall provide the following notice to the purchase or owner of the system, piping, or other equipment or appliance: "WARNING: Flammable Gas. The installation, modification, or repair of an LPG system by a person who is not licensed or registered to install, modify, or repair an LPG system may cause injury, harm, or loss. Contact a person licensed or registered to install, modify, or repair an LPG system. A person licensed to install or repair an LPG system may not be liable for damages caused by the modification of an LPG system by an unlicensed person except as otherwise provided by applicable law."

(b) A person holding a license to install or repair an LP-gas system who sells, installs, or repairs an LP-gas system, piping, or other equipment that is part of a system, or an appliance that is connected or attached to a system shall document the notice requirements in subsection (a) of this section.

§9.35. Written Procedure for LP-Gas Leaks.

(a) In addition to NFPA 58 §14.4.9.1, each [~~Each~~] licensee shall maintain a written procedure to be followed when any employee receives notification of a possible leak. The licensee shall ensure that all employees are familiar with the procedure and shall authorize employees to implement the procedure without management oversight. The written procedure shall be available to emergency response agencies as specified in NFPA 58, §6.25.2 [~~§3.10.2.1~~], and as stated in Table 1 of §9.403 of this title, (relating to Sections in NFPA 58 Not Adopted by Reference, and Adopted with Changes or [~~,~~] Additional Requirements[~~, or Corrections~~]).

(b) The written procedures shall include the classification of the leak grade as defined in §9.2 of this title (relating to Definitions).

(c) The procedures shall include the appropriate action criteria for the classification of leak determined according to the table in this section. The examples of leak conditions are provided as guidelines and are not exclusive. The judgment of the company personnel at the scene is of primary importance in determining the grade assigned to a leak.

Figure: 16 TAC §9.35(c)

§9.37. Termination of LP-Gas Service.

(a) If the Safety Division (the Division) determines that any LP-gas container or installation constitutes an immediate danger to the

public health, safety, and welfare, the Division shall require the immediate removal of liquid and vapor LP-gas and/or the immediate disconnection by a properly licensed company to the extent necessary to eliminate the danger. This may include appliances, equipment, or any part of the system including the servicing container. A warning tag may [~~shall~~] be installed by the Division until the unsafe condition is remedied. Once corrected, the tag shall be removed by the Division.

(b) - (c) (No change.)

§9.41. Testing of LP-Gas Systems in School Facilities.

(a) (No change.)

(b) School district requirements. Each school district shall ensure that a pressure test is performed on the LP-gas piping system in each school district facility as specified in this section. The pressure test shall be performed by an LP-gas licensee, a master or journeyman plumber registered with the Commission pursuant to §9.13 of this title (relating to General Installers and Repairman Exemption), or an employee of the school district who has been certified by the Commission to perform such pressure tests.

(1) - (5) (No change.)

(c) - (e) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on October 10, 2007.

TRD-200704838
Mary Ross McDonald
Managing Director
Railroad Commission of Texas
Earliest possible date of adoption: November 25, 2007
For further information, please call: (512) 475-1295

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SUBCHAPTER B. LP-GAS INSTALLATIONS, CONTAINERS, APPURTENANCES, AND EQUIPMENT REQUIREMENTS

16 TAC §§9.101, 9.114, 9.129 - 9.131, 9.134 - 9.137, 9.140 - 9.143

The amendments are proposed under the Texas Natural Resources Code, §113.051, which authorizes the Commission to adopt rules relating to any and all aspects or phases of the LP-gas industry that will protect or tend to protect the health, welfare, and safety of the general public; and §113.052, which allows the Commission to adopt by reference the published codes of nationally recognized societies, including the National Fire Protection Association.

The Texas Natural Resources Code, §113.051 and §113.052, are affected by the proposed amendments.

Issued in Austin, Texas, on October 9, 2007.

§9.101. Filings Required for Stationary LP-Gas Installations.

(a) - (b) (No change.)

(c) Aggregate water capacity of 10,000 gallons or more.

(1) For installations with an aggregate water capacity of 10,000 gallons or more, the licensee shall submit the following information to the Division at least 30 days prior to construction if the applicant is required to give notice as described in §9.102 of this title (relating to Notice of Stationary LP-Gas Installations):

(A) - (C) (No change.)

(D) a site plan of sufficient scale that identifies:

(i) the location, types, and sizes of all containers already on site or proposed to be on site;

(ii) the distances from the containers and the transfer system [~~material handling equipment~~] to the property lines, buildings, and railroad, pipeline, or roadway rights-of-way; [~~and~~]

(iii) any known potential hazards;[~~.~~]

(iv) location of bulkhead and distance from nearest container;

(v) location of remote emergency shut-off valves;

(vi) route of vehicular traffic around containers;

(vii) location of any electrically operated material handling equipment such as pumps or compressors; and

(viii) distance and location to nearest highway.

(E) If the facility is accessed from a public highway under the jurisdiction of the Texas Department of Transportation, a statement or permit from the Texas Department of Transportation showing that the driveway is of proper design and construction to allow safe entry and egress of the LP-gas transports.

(F) [~~(E)~~] pay a nonrefundable fee of $50 for the initial application. A nonrefundable $30 fee shall be required for any resubmission.

(2) In addition to NFPA 58, §6.5.4 [~~§3.2.3.3~~], prior to the installation of any individual LP-gas container, the Division shall determine whether the proposed installation constitutes a danger to the public health, safety, and welfare.

(A) - (B) (No change.)

(3) - (6) (No change.)

(d) - (f) (No change.)

§9.114. Odorizing and Reports.

(a) Odorization shall comply with NFPA 58, §4.2 [~~§1.3~~].

(b) - (d) (No change.)

§9.129. Manufacturer's Nameplate and Markings on ASME Containers.

(a) - (d) (No change.)

(e) Nameplates on containers built on or after September 1, 1984, shall be stainless steel and permanently attached to the container by continuous fusion welding around the perimeter of the nameplate, and shall be stamped or etched with the following information in characters at least 5/32 inch high:

(1) - (9) (No change.)

(10) manufacturer's serial number; [~~and~~]

(11) ASME Code symbol;[~~.~~]

(12) minimum design metal temperature _____F at MAWP _____ psi;

(13) type of construction "W"; and

(14) degree of radiography "RT-_____".

(f) - (i) (No change.)

§9.130. Commission Identification Nameplates.

(a) Prior to an original ASME nameplate or any manufacturer-issued nameplate becoming unreadable or detached from a stationary container with a water capacity of 4,001 gallons or more, the owner or operator of the container may request an identification nameplate from the Commission. Commission identification nameplates shall be issued only for containers which can be documented as being in continuous LP-gas service in Texas from a date prior to September 1, 1984. The container's serial number and manufacturer on the original or manufacturer-issued nameplate shall be clearly readable at the time the Commission identification nameplate is attached.

(1) The owner or operator of the container shall submit LPG Form 502 including clear photographs of the container showing:

(A) nozzle openings;

(B) front, rear, and side views;

(C) location of the nameplate;

(D) detailed view of the nameplate; and

(E) if a photograph cannot clearly depict the lettering on the nameplate, a pencil rubbing of the nameplate shall be submitted.

[~~(1) The owner or operator of the container shall submit LPG Form 502, including a clear and concise sketch of the container showing dimensions, nozzle openings, and size, as well as photographs, at least three inches by five inches, of the container. Photographs shall depict the nameplate and the reason for the request for an identification nameplate, that the original nameplate is becoming either detached or unreadable. If a photograph cannot clearly depict the lettering on the nameplate, a pencil rubbing of the nameplate shall be submitted.~~]

(2) - (6) (No change.)

(b) - (f) (No change.)

§9.131. 200 PSIG Working Pressure Stationary Vessels.

In addition to NFPA 58, §5.2.4.2 and 5.7.2.4 [~~§2.2.2.2 and §2.3.2.3~~], 200 psig working pressure stationary vessels in LP-gas service in Texas prior to September 1, 1981, may be continued in service for commercial propane provided that they are fitted with pressure relief valves set for 250 psig normal start to discharge and comply with other provisions of this chapter. For the purpose of this section, "commercial propane" is defined as having a vapor pressure not in excess of 210 psig at 100 degrees Fahrenheit. This section does not apply to LP-gas motor fuel and mobile fuel containers.

§9.134. Connecting Container to Piping.

LP-gas piping shall be installed only by a licensee authorized to perform such installation, a registrant authorized by §9.13 of this title (relating to General Installers and Repairman Exemption), or an individual exempted from licensing as authorized by Texas Natural Resources Code, §113.081. A licensee shall not connect an LP-gas container or cylinder to a piping installation made by a person who is not licensed to make such installation, except that connection may be made to piping installed by an individual on that individual's single family residential home. A licensee may connect to piping installed by an unlicenced person provided the licensee has performed a pressure test, verified that the piping has been installed according to the LP-Gas Safety Rules, properly tagged the installation, and filed a properly-completed LPG Form 22 with the Safety Division, identifying the unlicenced person who installed the LP-gas piping.

§9.135. Unsafe or Unapproved Containers, Cylinders, or Piping.

In addition to NFPA 58, §§5.2.1.1, 7.2.2.11, and 5.2.2 [~~§2.2.1.4~~], a licensee or the licensee's employees shall not introduce LP-gas into any container or cylinder if the licensee or employee has knowledge or reason to believe that such container, cylinder, piping, or the system or the appliance to which it is attached is unsafe or is not installed in accordance with the statutes or the *LP-Gas Safety Rules*.

§9.136. Filling of DOT Containers.

(a) In addition to NFPA 58 §7.4.2.1, DOT containers of less than 101 pounds LP-gas capacity, other than containers designed to be used on forklift or industrial trucks, shall be filled by weight only. The weight of such containers shall be determined by scales that meet the specifications of the National Institute of Standards and Technology's Handbook 44. Scales at licensees' facilities shall be currently registered with the Texas Department of Agriculture. The scales shall have a rated weighing capacity which exceeds the total weight of the cylinders being filled. The scales shall be accurate during the filling of the cylinder. The formula for filling LP-gas containers by weight under this section is as follows:

(1) - (2) (No change.)

(b) Containers designed to be used on forklifts or industrial trucks shall be filled as specified in NFPA 58, §11.12 [~~§8.3~~].

§9.137. Inspection of Containers [~~Cylinders~~] at Each Filling.

In addition to NFPA 58, §§5.2.1.1, 7.2.2.11, and 5.2.2 [~~§2.2.1.5~~], before filling a container or [~~DOT~~] cylinder, the individual filling the container or cylinder shall examine it for any obvious defects [~~the cylinder~~]. Where the container or cylinder is found to be dented or bulged, where the metal is gouged, or where there is evidence of corrosion which substantially reduces the integrity of the container or cylinder, such container or cylinder shall not be filled.

§9.140. Uniform Protection Standards.

(a) In addition to NFPA 58 §6.24.3.14, LP-gas transfer systems and storage containers shall be protected from tampering and/or vehicular traffic as specified in this section. New LP-gas containers which have never been installed or had LP-gas introduced into them, or other installations listed in paragraphs (1) - (4) of this subsection, are not required to comply with the fencing and guard railing requirements in subsections (b) and (d) of this section. The fencing and guard railing requirements also do not apply to the following:

(1) - (4) (No change.)

(b) In addition to NFPA 58, §§6.18.4.2, 6.19.3.2, 6.24.3.7, 7.2.3.8, 8.2.1.1, and 8.4.2.1 [~~§§3.3.6.1, 3.4.2.4, 3.9.3.6, 4.2.3.8, 5.2.1.1, and 5.4.2.1~~], fencing at LP-gas installations shall comply with the following:

(1) Fencing material shall be chain link with wire at least 12 1/2 American wire gauge in size, or industrial-type fencing, or material providing equivalent protection as determined by the Safety Division.

(2) - (3) (No change.)

(4) Gates in fences where bulkheads are installed shall be located directly in front of the bulkhead. Gates shall be locked whenever the area enclosed is unattended. Gate posts on gates installed directly in front of the bulkhead shall be located at 45-degree angles to the nearest corner of the bulkhead. [~~The width of the gate shall be sufficient to prevent binding of the transfer hoses on the gate posts and to ensure breaking of the bulkhead pipe risers or nipples in the event of a pullaway.~~] There shall be at least two means of emergency access from the fenced enclosure. If guard service is provided, it shall be extended to the LP-gas installation. Guard service shall be properly trained as set forth in §9.51(b)(4) of this title (relating to General Requirements for Training and Continuing Education). However, if a fenced area is not

larger than 100 square feet in area, the point of transfer is within three feet of a gate, and any containers being filled are not located within the enclosure, a second gate shall not be required.

(5) Clearance of at least three feet shall be maintained between the fencing and the container and the entire transfer system [~~, material handling equipment, and the entire dispensing system~~].

(6) (No change.)

(7) The operating end of a container, including the entire transfer system [~~all material handling equipment and the entire dispensing system~~], shall be completely enclosed by fencing.

(c) (No change.)

(d) In addition to NFPA 58, §§6.6.1.2, 6.6.6.1(a) - (d), 6.6.6.2(6), 6.18.4.2, 6.24.3.12, and 8.4.2 [~~§§3.2.4.2, 3.2.9.1(a)-(d), 3.2.9.2(d), 3.3.6.1, 3.9.3.8, 5.4.2.1~~], guardrails at LP-gas installations, except as noted in subsection (a) of this section, shall comply with the following:

(1) In addition to NFPA 58 §6.18.4.2(c), where [~~Where~~] fencing is not used to protect the installation as specified in subsection (b) of this section, locks for the valves or other suitable means shall be provided to prevent unauthorized withdrawal of LP-gas, and guardrailing specified in paragraphs (2) - (6) of this subsection, or protection considered by the Division to be equivalent, shall be required.

(2) - (4) (No change.)

(5) Clearance of at least three feet shall be maintained between the railing and any part of an LP-gas transfer system or container or clearance of two feet for retail cylinder filling or service station installations. The two posts at the ends of any railing which protects a bulkhead shall be located a minimum of 24 and a maximum of 36 inches at 45-degree angles to the nearest corner of the bulkhead.

(6) The operating end of the container[~~, including all material handling equipment and the entire dispensing system,~~] and any part of the LP-gas transfer system or container which is exposed to collision damage or vehicular traffic shall be protected from this type of damage. The protection shall extend at least three feet beyond any part of the LP-gas transfer system or container which is exposed to collision damage or vehicular traffic.

(e) - (f) (No change.)

(g) In addition to NFPA 58 §5.2.8.1, LP-gas installations shall comply with the sign and lettering requirements specified in Table 1 of this section. An asterisk indicates that the requirement applies to the equipment or location listed in that column.
Figure: 16 TAC §9.140(g)

(1) - (2) (No change.)

(3) Items 1, 2, and 3 in the column entitled "Licensee or Non-Licensee ASME 4001+ Gal. A.W.C." in Table 1 apply to installations with 4,001 gallons or more aggregate water capacity protected only by guardrailing as required in subsection (d) of this section, and bulkheads as required by §9.143 of this title (relating to Bulkhead, Internal Valve, API 607 Ball Valve, and ESV Protection for Stationary LP-Gas Installations with Individual or Aggregate Water Capacities of 4,001 Gallons or More) for commercial, bulk storage, cylinder filling, or forklift installations.

(4) (No change.)

(5) Item 13 in the column entitled "Requirements" in Table 1 applies to outlets where an LP-gas certified employee is responsible for the LP-gas activities at that outlet, when a licensee's employee is the operations supervisor at more than one outlet as required by §9.17(a) of this title (relating to Designation and Responsibilities of Company Representative and Operations Supervisor).

(6) [~~(5)~~] Any information in Table 1 of this subsection required for an underground container shall be mounted on a sign posted within 15 feet horizontally of the manway or the container shroud.

(7) Licensees and non-licensees shall comply with operational and/or procedural actions specified by the signage requirements of this section.

(8) Any 24-hour emergency telephone numbers shall be:

(A) monitored at all times; and

(B) be answered by a person who is knowledgeable of the hazards of LP-gas and who has comprehensive LP-gas emergency response and incident information, or has immediate access to a person who possesses such knowledge and information. A telephone number that requires a call back (such as an answering service, answering machine, or beeper device) does not meet the requirements of this section.

(h) Storage racks used to store nominal 20-pound DOT portable or any size forklift containers shall be protected against vehicular damage by:

(1) meeting the guardrail requirements of subsection (d) of this section; or

(2) installing guard posts, provided [~~that~~]:

(A) the guard posts are installed a minimum of 18 inches from each storage rack (effective February 1, 2008) and consist of at least three-inch schedule 40 steel pipe, capped on top or otherwise protected to prevent the entrance of water or debris into the guard post, no more than four feet apart, and anchored in concrete at least 30 inches below ground and rising at least 30 inches above the ground; or

(B) the guard posts are installed a minimum of 18 inches from each storage rack (effective February 1, 2008) and [~~if the guardposts cannot be anchored in concrete at least 30 inches below ground, they~~] are constructed of at least four-inch schedule 40 steel pipe capped on top or otherwise protected to prevent the entrance of water or debris into the guard post, and attached by welding to a minimum 8-inch by 8-inch steel plate at least 1/2 inch thick. The guard posts and steel plate shall be permanently installed and securely anchored to a concrete driveway or concrete parking area.

(3) Guardrail or guard posts are not required to be installed if:

(A) the cylinder storage rack is located a minimum of 48 inches behind a concrete curb or concrete wheel stop that is a minimum of six inches in height above the grade of the driveway or parking area [~~any portable cylinder exchange rack is located against a building or attached structure~~];

(B) if the requirements of subparagraph (A) cannot be met, the cylinder storage rack must be installed a minimum of 48 inches behind a concrete curb or concrete wheel stop that is a minimum of four inches in height above the grade of the driveway or parking area, and a concrete wheel stop at least four inches in height must be installed at least 12 inches from the curb or first wheel stop [~~the rack is located on a walkway which is a minimum of four inches in height above the grade of the driveway or parking space~~];

[~~(C) a minimum six-inch-high cement parking wheelstop is installed on the driveway or parking space, or a four-inch-high cement parking wheelstop is installed on the driveway or parking space at least 12 inches from the curb;~~]

[~~(D) the cement parking wheelstop is secured against displacement; and~~]

[~~(E) the distance from the cement parking wheelstop to any portable cylinder exchange rack is 48 inches or more for a six-inch-high wheelstop, or 60 inches or more for a four-inch-high wheelstop.~~]

(4) All parking wheel stops and cylinder storage racks in paragraph (3) of this subsection must be secured against displacement.

[~~(4) A wheelstop is not required to be installed if a curb is at least six inches tall and the cylinder exchange rack is at least 48 inches away from the curb.~~]

[~~(5) If exceptional circumstances exist or will exist at the location of a storage rack which would require additional protection such as larger-diameter guard railing or guardposts, then the licensee or operator of the installation shall install such additional protection. In addition, the Division at its own discretion may require an installation to be protected with added safeguards to adequately protect the health, safety, and welfare of the general public. The Division shall notify the person in writing of the specific additional protection needed and shall establish a reasonable time period during which the additional protection shall be installed. The licensee shall ensure that any necessary extra protection is installed. If a person owning or operating such an installation disagrees with the Division's determination made under this subsection, that person may request a public hearing on the matter. The installation shall either be protected in the manner prescribed by the Division or removed from service with all product withdrawn from it until the Division's final decision.~~]

(i) Self-service dispensers shall be protected against vehicular damage by:

(1) guardrails that comply with subsection (d)(2) - (6) of this section; or

(2) guard posts that comply with subsection (d)(2) of this section; or

(3) where routine traffic patterns expose only the approach end of the dispenser to vehicular damage, support columns, concrete barriers, bollards, inverted U-shaped guard posts anchored in concrete, or other protection acceptable to the Safety Division, provided:

(A) such protection extends beyond the framework of the dispenser; and

(B) at least 24 inches of clearance is maintained between the approach end of the dispenser and the protective barrier.

(4) Self-service dispensers utilizing protection specified in paragraphs (2) - (3) of this subsection shall be connected to supply piping by a device designed to prevent the loss of LP-gas in the event the dispenser is displaced. The device must retain liquid on both sides of the breakaway point and be installed in a manner to protect the supply piping against damage.

(j) If exceptional circumstances exist or will exist at the location of a storage rack or a self-service dispenser which would require additional protection such as larger-diameter guard railing or guard posts, then the licensee or operator of the installation shall install such additional protection. In addition, the Division at its own discretion may require an installation to be protected with added safeguards to adequately protect the health, safety, and welfare of the general public. The Division shall notify the person in writing of the specific additional protection needed and shall establish a reasonable time period during which the additional protection shall be installed. The licensee shall ensure that any necessary extra protection is installed. If a person owning or operating such an installation disagrees with the Division's determination made under this subsection, that person may request a public hearing on the matter. The installation shall either be protected in the manner prescribed by the Division or removed from service with all product withdrawn from it until the Division's final decision.

§9.141. Uniform Safety Requirements.

(a) In addition to NFPA 58, §6.6.1.4 [~~§3.2.4.1(f)~~], containers shall be painted as follows:

(1) - (2) (No change.)

(b) In addition to NFPA 58, §6.24.4.2 [~~§3.9.4.2~~], each LP-gas private or public motor/mobile or forklift refueling installation which includes a liquid dispensing system shall incorporate into that dispensing system a breakaway device. Any vapor return hose installed at such installations shall also be equipped with a breakaway device. LP-gas installations at which forklift cylinders are completely removed from the forklift before being filled are not required to have a breakaway device.

(c) Locking handles on ball-type shutoff valves. Any ball-type shutoff valve less than two inches in size shall have a locking handle. If a ball-type shutoff valve of any size has a locking handle installed at the terminal end of the hose, the main liquid and/or vapor valves or main shutoff valves on the stationary container at an attended installation may remain open as long as the locking handle on the transfer hose remains locked until the transfer hose is properly connected. If a ball-type shutoff valve two inches or larger in size does not have a locking handle, the main liquid and/or vapor valves or main shutoff valves on the stationary container shall remain closed at all times and shall not be opened until the transfer hose is properly connected or disconnected.

(d) (No change.)

(e) In addition to NFPA 58, §5.2.8.1 [~~§2.2.6.1~~], all containers shall be numbered in accordance with the requirements set forth in Table 1 of §9.140 of this title (relating to Uniform Protection Standards).

(f) In addition to NFPA 58, §6.4.7 [~~§3.2.2.8~~], no canopies or coverings are allowed over any LP-gas container or over loading and unloading areas where LP-gas transport transfer operations are performed. Non-combustible wind breaks and other weather protection may be installed to provide employees and customers protection against the elements of weather, but shall not be installed over any portion of an LP-gas container.

(g) - (h) (No change.)

[~~(i) A licensee who installs an LP-gas container, including containers on converted vehicles, or containers on industrial trucks, except those used for bulk storage or retail DOT container filling/service station installations, shall attach to the container a decal or tag of metal or other permanent material indicating the following information:~~]

[~~(1) the licensee's name;~~]

[~~(2) the LP-gas license number; and~~]

[~~(3) the year the container was installed.~~]

[~~(4) A single identification decal or tag may be used to satisfy the requirements in §§9.206, 9.307, and 9.308 of this title (relating to Vehicle Identification Labels, Identification of Converted Appliances, and Identification of Piping Installation, respectively).~~]

§9.142. LP-Gas Container Storage and Installation Requirements.

Except as noted in this section and in addition to NFPA 58 §6.3.1, LP-gas containers shall be stored or installed in accordance with the distance requirements in NFPA 58, §§6.2.2, 6.4.5, and 8.4.1 [~~§§3.2.2, 3.2.2.6, and 5.4.1~~] and any other applicable requirements in NFPA 58 or the LP-Gas Safety Rules.

(1) An LP-gas liquid dispensing installation other than a retail operated DOT portable container filling/service station installation is not required to have a pump, provided that the storage containers are located one and one half times the required distances specified in NFPA 58, §6.2.2 [~~§3.2.2~~], or a minimum distance of 15 feet if the storage container is less than 125 gallons water capacity.

(2) (No change.)

§9.143. Bulkhead, Internal Valve, API 607 Ball Valve, and ESV Protection for Stationary LP-Gas Installations with Individual or Aggregate Water Capacities of 4,001 Gallons or More.

(a) Instead of NFPA 58, §6.6.12 [~~§§3.2.19.1, 3.2.19.2, 3.2.19.3, and 3.2.19.6~~], effective February 1, 2001, new stationary LP-gas installations with individual or aggregate water capacities of 4,001 gallons or more, including licensee and nonlicensee locations, shall install a vertical bulkhead, and for all container openings 1 1/4 inches or greater, pneumatically-operated emergency shutoff valves (ESVs), [~~and~~] pneumatically-operated internal valves, or pneumatically-operated API 607 ball valves [~~and pneumatically-operated emergency shutoff valves (ESVs),~~] as required in this section and in the table in §9.403 of this title (relating to Sections in NFPA 58 Not Adopted by Reference, and Adopted With Changes or [~~,~~] Additional Requirements[~~, or Corrections~~]) for NFPA 58, §6.11.1 [~~§§3.2.18.1 and 3.3.3.6~~]. In lieu of a pneumatically-operated internal valve or a pneumatically-operated ESV, a backflow [~~back~~] check valve may be installed where the flow is in one direction into the container [~~only may be installed~~]. The backflow check valve shall have a metal-to-metal seat or a primary resilient seat with metal backup, not hinged with combustible material, and shall be designed for this specific application.

(1) The pneumatic ESVs and/or backflow check valves shall be installed in the fixed piping of the transfer system upstream of the bulkhead and within four feet of the bulkhead with a stainless steel flexible wire-braided hose not more than 36 inches long installed between the ESV and the bulkhead.

(2) The ESVs shall be installed in the piping so that any break resulting from a pull away will occur on the hose or swivel-type piping side of the connection while retaining intact the valves and piping on the storage side of the connection and will activate the ESVs [~~ESV~~] at the bulkhead and the internal valves, ESVs, and API 607 ball valves [~~primary discharge valves~~] at the container or containers. Provisions for anchorage and breakaway shall be provided on the cargo tank side for transfer from a railroad tank car directly into a cargo tank. Such anchorage shall not be required from the tank car side.

(3) Pneumatically-operated ESVs, internal valves, and API 607 ball valves shall be equipped for automatic shutoff using thermal (fire) actuation where the thermal element is located within five feet (1.5 meters) of the ESVs, internal valves, and/or API 607 ball valves. Temperature sensitive elements [~~of ESVs~~] shall not be painted nor shall they have any ornamental finishes applied after manufacture.

(4) (No change.)

(5) Pneumatically-operated internal valves, [~~and~~] ESVs, and API 607 ball valves shall be interconnected and incorporated into at least one remote operating system.

(b) In addition to NFPA 58 §5.9.6, within [~~Within~~] two years of February 1, 2001, or by February 1, 2003, at the latest, stationary LP-gas installations in existence as of February 1, 2001, with individual or aggregate water capacities of 4,001 gallons or more, including licensee and nonlicensee locations, or railroad tank car transfer systems to fill trucks with no stationary storage involved, which do not have a bulkhead, ESVs, and/or backflow check valves where the flow is in one direction into the container [~~and ESVs installed~~] shall install vertical bulkheads, [~~and~~] pneumatic ESVs and/or backflow check valves where the flow is in one direction into the container.

(c) Existing installations which have horizontal bulkheads and [~~and/or backflow check valves where the flow is in one direction into the container or~~] cable-actuated ESVs shall comply with the following [~~are not required to replace that equipment except as follows~~]:

(1) (No change.)

(2) If [~~a backflow check valve or~~] a cable-actuated ESV requires replacement, it shall be replaced with a pneumatically-operated [~~pneumatic actuated~~] ESV; [~~or~~]

(3) If the horizontal bulkhead or a backflow check valve or a cable-actuated ESV are moved from their original location to another location, no matter what the distance from the original location, then the installation shall comply with the requirements for a vertical bulkhead and pneumatically-operated [~~pneumatic actuated~~] ESVs;[~~,~~]

(4) All cable-actuated ESVs shall be replaced with pneumatically-operated ESVs by January 1, 2011.

(d) Bulkheads, whether horizontal or vertical, shall comply with the following requirements:

(1) (No change.)

(2) No more than [~~Only one or~~] two transfer hoses shall be attached to a pipe riser. If two hoses are simultaneously connected to one or two transports, the use of the two hoses shall not prevent the activation of the ESV in the event of a pull away;

(3) - (9) (No change.)

(e) In addition to NFPA 58, §5.7.4.2 [~~§2.3.3.2~~] as amended in the table in §9.403 of this title (relating to Sections in NFPA 58 Not Adopted by Reference, and Adopted with Changes or [~~,~~] Additional Requirements[~~, or Corrections~~]), ESVs, [~~and~~] internal valves, and API 607 ball valves shall have emergency remote controls conspicuously marked according to the requirements of Table 1 of §9.140 of this title (relating to Uniform Protection Standards). Effective February 1, 2001, for all new facilities, where a bulkhead, internal valves, and ESVs are installed, at least one clearly identified and easily accessible manually operated remote emergency shutoff device shall be located between 20 and 100 feet from the ESV in the path of egress from the ESV; beginning September 1, 2005, for new installations, this distance shall be a minimum of 25 feet and a maximum of 100 feet. Existing installations shall comply by August 1, 2001. API 607 ball valves installed after February 1, 2008, shall also meet the requirements of this section. The use of swivel-type piping as specified in subsection (d)(8) of this section shall not eliminate the requirement for an ESV. Swivel-type piping may be installed between the bulkhead and the minimum 12-inch nipple, but shall not eliminate the requirement for an ESV. The swivel-type piping shall be installed and maintained according to the manufacturer's instructions.

(f) (No change.)

(g) In addition to NFPA 58 §§5.9.6 and 6.9.6.1, by [~~By~~] February 1, 2003, rubber flexible connectors which are 3/4-inch or larger in size installed in liquid or vapor piping at an existing liquid transfer operation shall have been [~~be~~] replaced with a stainless steel flexible connector. Stainless steel flexible connectors shall be 60 [~~36~~] inches in length or less, and shall comply with all applicable *LP-Gas Safety Rules*. Flexible connectors installed at a new installation after February 1, 2001, shall be stainless steel.

(h) (No change.)

(i) Stationary LP-gas installations with individual or aggregate water capacities of 4,001 gallons or more are exempt from subsections (a) and (b) of this section provided:

(1) each container is filled solely through a 1 3/4 inch double back check filler valve installed directly into the container; and

(2) at least one clearly identified and easily accessible manually operated remote emergency shutoff device shall be located between 25 and 100 feet from the point of transfer in the path of egress to close the primary discharge valves in the containers; and

(3) [~~(2)~~] the LP-gas installation is not used to fill an LP-gas transport.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on October 10, 2007.

TRD-200704839
Mary Ross McDonald
Managing Director
Railroad Commission of Texas
Earliest possible date of adoption: November 25, 2007
For further information, please call: (512) 475-1295

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SUBCHAPTER C. VEHICLES AND VEHICLE DISPENSERS

16 TAC §§9.206, 9.208, 9.211

The amendments are proposed under the Texas Natural Resources Code, §113.051, which authorizes the Commission to adopt rules relating to any and all aspects or phases of the LP-gas industry that will protect or tend to protect the health, welfare, and safety of the general public; and §113.052, which allows the Commission to adopt by reference the published codes of nationally recognized societies, including the National Fire Protection Association.

The Texas Natural Resources Code, §113.051 and §113.052, are affected by the proposed amendments.

Issued in Austin, Texas, on October 9, 2007.

§9.206. Vehicle Identification Labels.

[~~(a)~~] LP-gas shall not be introduced into any vehicle powered by LP-gas and designed for regular use on public roadways unless the vehicle is properly identified by a weather-resistant diamond-shaped label described in NFPA 58, §11.11.1 [~~§8.2.10~~], as that section is amended in Table 1 of §9.403 of this title (relating to Sections in NFPA 58 Not Adopted by Reference, and Adopted With Changes or [~~,~~] Additional Requirements[~~, or Corrections~~]).

[~~(b) Upon completion of a vehicle conversion, the licensee making the conversion shall affix to the vehicle a decal or tag of metal or other permanent material in a readily visible location indicating the following information:~~]

[~~(1) the licensee's name;~~]

[~~(2) the LP-gas license number; and~~]

[~~(3) the year and month the vehicle was converted.~~]

[~~(c) A single identification decal or tag may be used to satisfy the requirements in §§9.141, 9.307, and 9.308 of this title (relating to Uniform Safety Requirements, Identification of Converted Appliances, and Identification of Piping Installation, respectively).~~]

§9.208. Testing Requirements.

Each transport container unit required to be registered with the License and Permit Section of the Gas Services Division (the Section) shall be tested in accordance with 49 CFR 180.407, relating to requirements for test and inspection of specification cargo tanks. The tests shall be conducted by any individual authorized by the United States Department of Transportation through a DOT "CT" number to conduct such tests [~~a Category A, B, or O licensee~~]. This section shall not apply to the initial transfer of unregistered units that are tested and transferred from another state. If the test results show any unsafe condition, or if the transport unit does not comply with 49 CFR Parts 100-185, the transport container unit shall be immediately removed from LP-gas service and shall not be returned to LP-gas service until all necessary repairs have been made and the Section authorizes in writing its return to service.

§9.211. Markings.

In addition to NFPA 58 §9.4.6.2, each [~~Each~~] LP-gas transport and container delivery unit in LP-gas service shall be marked on each side and the rear with the name of the licensee or the ultimate consumer operating the unit. Such lettering shall be legible and at least two inches in height and in sharp color contrast to the background. The Safety Division shall determine whether the name marked on the unit is sufficient to properly identify the licensee or ultimate consumer.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on October 10, 2007.

TRD-200704840
Mary Ross McDonald
Managing Director
Railroad Commission of Texas
Earliest possible date of adoption: November 25, 2007
For further information, please call: (512) 475-1295

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SUBCHAPTER D. ADOPTION BY REFERENCE OF NFPA 54 (NATIONAL FUEL GAS CODE)

16 TAC §§9.301 - 9.303, 9.306 - 9.308, 9.311 - 9.313

The amendments are proposed under the Texas Natural Resources Code, §113.051, which authorizes the Commission to adopt rules relating to any and all aspects or phases of the LP-gas industry that will protect or tend to protect the health, welfare, and safety of the general public; and §113.052, which allows the Commission to adopt by reference the published codes of nationally recognized societies, including the National Fire Protection Association.

The Texas Natural Resources Code, §113.051 and §113.052, are affected by the proposed amendments.

Issued in Austin, Texas, on October 9, 2007.

§9.301. Adoption by Reference of NFPA 54.

(a) Except as modified in the remaining sections of this subchapter, the Commission adopts by specific reference the provisions established by the National Fire Protection Association in its 2006 [~~1999~~] edition of the *National Fuel Gas Code*, commonly referred to as NFPA 54 or Pamphlet 54. Nothing in this section or subchapter shall prevent the Commission, after notice, from adopting additional requirements, whether more or less stringent, for individual situations to protect the health, safety, and welfare of the general public. Any documents or parts of documents incorporated by reference into these rules shall be a part of these rules as if set out in full.

(b) The Commission also adopts by reference all other NFPA publications or portions of those publications referenced in NFPA 54 which apply to LP-gas activities only. The adopted pamphlets referenced in NFPA 54 are:

(1) NFPA 30A, *Code for Motor Fuel Dispenser Facilities and Repair Garages*, 2003 [~~*Automotive and Marine Service Station Code*, 1996~~] edition;

(2) NFPA 37, *Standard for the Installation and Use of Stationary Combustion Engines and Gas Turbines*, 2002 [~~1998~~] edition;

(3) NFPA 51, *Standard for the Design and Installation of Oxygen-Fuel Gas Systems for Welding, Cutting, and Allied Processes*, 2002 [~~1997~~] edition;

(4) NFPA 52, *[~~Compressed Natural Gas (CNG)~~] Vehicular Fuel Systems Code*, 2006 [~~1998~~] edition;

(5) NFPA 58, *Liquefied Petroleum Gas Code*, 2004 [~~2001~~] edition;

(6) NFPA 70, *National Electrical Code*, 2005 [~~1999~~] edition;

(7) NFPA 82, *Standard on Incinerators and [~~,~~] Waste, and Linen Handling Systems and Equipment*, 2004 [~~1999~~] edition;

(8) NFPA 88A, *Standard for Parking Structures*, 2002 [~~1998~~] edition;

(9) NFPA 90A, *Standard for the Installation of Air Conditioning and Ventilating Systems*, 2002 [~~1999~~] edition;

(10) NFPA 90B, *Standard for the Installation of Warm Air Heating and Air Conditioning Systems*, 2006 [~~1999~~] edition;

(11) NFPA 96, *Standard for Ventilation Control and Fire Protection of Commercial Cooking Operations*, 2004 [~~1998~~] edition;

(12) NFPA 211, *Standard for Chimneys, Fireplaces, Vents, and Solid Fuel-Burning Appliances*, 2003 [~~2000~~] edition;

(13) NFPA 409, *Standard on Aircraft Hangars*, 2004 [~~1995~~] edition; [~~and~~]

(14) NFPA 853, *Standard for the Installation of Station Fuel Cell Power Systems*, 2003 edition; and

(15) [~~(14)~~] NFPA 1192, *Standard on Recreational Vehicles*, 2005 [~~1999~~] edition.

§9.302. Clarification of Certain Terms Used in NFPA 54.

(a) Authority having jurisdiction. As pertains to LP-gas activities in Texas, the phrase "authority having jurisdiction" defined in NFPA 54, §3.2 [~~§1.7~~], and referenced in other NFPA publications shall be the Railroad Commission of Texas or any of its divisions or employees, except with respect to the definitions of "approved," "engineering," "labeled," [~~"labeling,"~~] and "listed" in NFPA 54, §3.2 [~~§1.7~~].

(b) Qualified agency. The term "qualified agency" as defined in NFPA 54, §3.3.83 [~~§1.7~~], shall include a person (as "person" is defined in §9.2 of this title (relating to Definitions)) who holds a current license issued by the Commission, or a person performing certain LP-gas activities on his own premises, as allowed in §9.134 of this title (relating to Connecting Container to Piping).

(c) (No change.)

§9.303. Exclusion of NFPA 54, §10.29 [~~§6.31~~].

The Commission does not adopt NFPA 54, §10.29 [~~§6.31~~], which refers to NFPA 52, [~~Compressed Natural Gas (CNG)~~] Vehicular Fuel Systems Code. Persons engaging in CNG activities shall comply with the Commission's adopted rules at Chapter 13 of this title (relating to Regulations for Compressed Natural Gas (CNG).

§9.306. Room Heaters in Public Buildings.

In addition to applicable requirements in NFPA 54, Chapter 10 [~~6~~], Installation of Specific Equipment, room heaters in schools, day care centers, foster homes, hotels or other similar buildings or rooms used for temporary lodging shall be vented and equipped with a safety shutoff device, except that room heaters with 40,000 Btu or less input and infrared heaters are not required to be vented, but shall have a safety shutoff device and an oxygen depletion system (ODS).

§9.307. Identification of Converted Appliances.

(a) In addition to the requirements of NFPA 54, §9.1.3 [~~§5.1.3~~], and NFPA 58, §5.20 [~~§2.6.2.1~~], upon completion of the conversion and testing of LP-gas appliances, the licensee, registrant, or appliance manufacturer making the conversion shall attach to each such appliance a decal or tag of metal or other permanent material indicating that the appliance is converted for use with LP-gas. [~~the following information:~~]

[~~(1) the licensee's name;~~]

[~~(2) the LP-gas license number;~~]

[~~(3) the year the appliance was converted; and~~]

[~~(4) the wording, "Converted to LP-Gas."~~]

(b) Conversion of an appliance for use with LP-gas by an authorized representative of the appliance manufacturer, using parts provided by the manufacturer, is not an activity requiring licensing pursuant to Texas Natural Resources Code, §113.081.

[~~(b) A single identification decal or tag may be used to satisfy the requirements in §§9.141, 9.206, and 9.308 of this title (relating to Uniform Safety Requirements, Vehicle Identification Labels, and Identification of Piping Installation, respectively) provided the decal or tag meets all the requirements of those sections.~~]

§9.308. Identification of Piping Installation.

(a) In addition to the requirements of NFPA 54, Chapter 7 [~~Part 3~~], Gas Piping Installation, LP-gas piping shall be installed, altered, repaired, pressure tested, and leakage tested only by persons properly licensed or certified by the Commission.

(b) Licensees and registrants shall document and retain such documentation of all pressure and leakage tests pursuant to §9.4 of this title (relating to Records and Enforcement.

[~~(b) Upon completion of the installation, alteration, repair, or pressure testing of an LP-gas piping system, the licensee shall attach to the end of the piping nearest the container a decal or tag of metal or other permanent material indicating the following information:~~]

[~~(1) the licensee's name;~~]

[~~(2) the LP-gas license number; and~~]

[~~(3) the year the piping was installed, altered, repaired, or pressure tested.~~]

[~~(c) A single identification decal or tag may be used to satisfy the requirements in §§9.141, 9.206, and 9.307 of this title (relating to Uniform Safety Requirements, Vehicle Identification Labels, and Identification of Converted Appliances, respectively) provided the decal or tag meets all the requirements of those sections.~~]

[~~(d) Licensees are not required to place a decal or tag following the performance of a leakage test on an LP-gas piping system. Licensees shall retain documentation of all leakage tests and shall make that documentation available for Commission inspection upon request.~~]

§9.311. Special Exceptions for Agricultural and Industrial Structures Regarding Appliance Connectors and Piping Support.

(a) In addition to the requirements of NFPA 54, §9.6.2 and NFPA 58 §5.9.6.5 [~~§5.5.2~~] regarding gas hose connectors, agricultural structures, such as greenhouses or broiler houses, or industrial structures not inhabited by humans may have appliance connectors more than six feet in length provided that:

(1) (No change.)

(2) the hose shall comply with NFPA 58, §§5.9.6.1 through 5.9.6.4 [~~§§2.4.6.1 through 2.4.6.3~~];

(3) - (4) (No change.)

(b) (No change.)

(c) In addition to the requirements in NFPA 54, §7.2.6 [~~§3.3.6, Table 3.3.6~~], the support spacing requirement for 3/4 to one inch pipe shall not apply to agricultural structures not inhabited by humans, such as greenhouses and broiler houses, provided that:

(1) such piping is supported by ceiling trusses no more than ten feet apart; and

(2) pipe joints and fittings are supported by the trusses.

§9.312. Certification Requirements for Joining Methods.

(a) In addition to the requirements in NFPA 54, §5.6.4 [~~§2.6.9~~], and NFPA 58, §5.9.5 [~~§2.4.4.3~~], and in addition to other LP-gas certification requirements, prior to performing heat-fusion on polyethylene pipe or tubing, an individual shall be certified by either the Safety Division (the Division) or a person or certification school authorized by the Division. The certification shall confirm that the individual has a working knowledge of heat-fusion methods and the ability to properly perform the heat-fusion activity.

(b) - (c) (No change.)

§9.313. Sections in NFPA 54 Adopted with Additional Requirements or Not Adopted [~~Corrections~~].

Table 1 of this section lists certain NFPA 54 sections which the Commission adopts with additional requirements or does not adopt in order to address the Commission's rules in this chapter. [~~The Commission adopts certain NFPA 54 sections to include language corrected in the Errata dated October 21, 1999, and the Errata dated February 4, 2000, issued by NFPA to correct typographical or other errors in the published NFPA 54 pamphlet. According to NFPA, these errors may be corrected in future printings.~~]

Figure: 16 TAC §9.313

[~~Figure 1: 16 TAC §9.313~~]

[~~Figure 2: 16 TAC §9.313~~]

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on October 10, 2007.

TRD-200704841
Mary Ross McDonald
Managing Director
Railroad Commission of Texas
Earliest possible date of adoption: November 25, 2007
For further information, please call: (512) 475-1295

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SUBCHAPTER E. ADOPTION BY REFERENCE OF NFPA 58 (LP-GAS CODE)

16 TAC §§9.401 - 9.403

The amendments are proposed under the Texas Natural Resources Code, §113.051, which authorizes the Commission to adopt rules relating to any and all aspects or phases of the LP-gas industry that will protect or tend to protect the health, welfare, and safety of the general public; and §113.052, which allows the Commission to adopt by reference the published codes of nationally recognized societies, including the National Fire Protection Association.

The Texas Natural Resources Code, §113.051 and §113.052, are affected by the proposed amendments.

Issued in Austin, Texas, on October 9, 2007.

§9.401. Adoption by Reference of NFPA 58.

(a) Except as modified in this subchapter, the Commission adopts by specific reference the provisions established by the National Fire Protection Association (NFPA) in its 2008 [~~2001~~] edition of the *Liquefied Petroleum Gas Code* (formerly titled *Standard for the Storage and Handling of Liquefied Petroleum Gases*), commonly referred to as NFPA 58 or Pamphlet 58, effective February 1, 2008 [~~September 1, 2003~~]. Nothing in this section or subchapter shall prevent the Commission, after notice, from adopting additional requirements, whether more or less stringent, for individual situations to protect the health, safety and welfare of the general public. Any documents or parts of documents incorporated by reference into these rules shall be a part of these rules as if set out in full.

(b) The Commission also adopts by reference all other NFPA publications or portions of those publications referenced in NFPA 58, §2.1 [~~§13.1.1~~], which apply to LP-gas activities only. The adopted pamphlets referenced in NFPA 58 are:

(1) NFPA 10, *Standard for Portable Fire Extinguishers*, 2007 [~~1998~~] edition;

(2) NFPA 13, *Standard for the Installation of Sprinkler Systems*, 2007 edition;

(3) [~~(2)~~] NFPA 15, *Standard for Water Spray Fixed Systems for Fire Protection*, 2007 [~~1996~~] edition;

(4) NFPA 25, *Standard for the Inspection, Testing, and Maintenance of Water-Based Fire Protection Systems*, 2005 edition;

(5) [~~(3)~~] NFPA 30, *Flammable and Combustible Liquids Code*, 2008 [~~2000~~] edition;

(6) NFPA 30A, *Code for Motor Fuel Dispensing Facilities and Repair Garages*, 2008 edition;

[~~(4) NFPA 37, *Standard for the Installation and Use of Stationary Combustion Engines and Gas Turbines*, 1998 edition;~~]

[(5) NFPA 50B, *Standard for Liquefied Hydrogen Systems at Consumer Sites,* 1999 edition;]

[(6) NFPA 51, *Standard for the Design and Installation of Oxygen-Fuel Gas Systems for Welding, Cutting, and Allied Processes,* 1997 edition;]

(7) NFPA 51B, *Standard for Fire Prevention in Use of Cutting and Welding Processes*, 2003 [1999] edition;

(8) NFPA 55, *Standard for the Storage, Use, and Handling of Compressed Gases and Cryogenic Fluids in Portable and Stationary Containers, Cylinders, and Tanks*, 2005 edition;

[(8) NFPA 54, *National Fuel Gas Code*, 1999 edition;]

(9) NFPA 59, *Utility LP-Gas Plant Code*, 2004 [1999] edition;

[(10) NFPA 61, *Standard for the Prevention of Fires and Dust Explosions in Agricultural and Food Products Facilities,* 1999 edition;]

(10) [(11)] NFPA 70, *National Electrical Code*, 2008 [1999] edition;

[(12) NFPA 82, *Standard on Incinerators and Waste and Linen Handling Systems and Equipment,* 1999 edition;]

[(13) NFPA 86, *Standard for Ovens and Furnaces,* 1999 edition;]

[(14) NFPA 96, *Standard for Ventilation Control and Fire Protection of Commercial Cooking Operations,* 1998 edition;]

(11) NFPA 99, *Standard for Health Care Facilities*, 2005 edition;

(12) [(15)] NFPA 101, *Life Safety Code*, 2006 [2000] edition;

(13) NFPA 160, *Standard for the Use of Flame Effects Before an Audience*, 2006 edition;

(14) [(16)] NFPA 220, *Standard on Types of Building Construction*, 2006 [1999] edition;

(15) [(17)] NFPA 251, *Standard Methods of Tests of Fire Resistance [Endurance] of Building Construction and Materials*, 2006 [1999] edition;

[(18) NFPA 302, *Fire Protection Standard for Pleasure and Commercial Motor Craft,* 1998 edition;]

[(19) NFPA 501A, *Standard for Fire Safety Criteria for Manufactured Home Installations, Sites, and Communities,* 2000 edition;]

[(20) NFPA 505, *Fire Safety Standard for Powered Industrial Trucks Including Type Designations, Areas of Use, Conversions, Maintenance, and Operation,* 1999 edition;]

(16) [(21)] NFPA 1192, *Standard on Recreational Vehicles*, 2005 [1999] edition.

§9.402. Clarification of Certain Terms Used in NFPA 58.

(a) Authority having jurisdiction. As pertains to LP-gas activities in Texas, the phrase "authority having jurisdiction" defined in NFPA 58, §3.2 [§1.7], and referenced in other NFPA publications shall be the Railroad Commission of Texas or any of its divisions or employees, except with respect to the definitions of "approved," "labeled," and "listed" in NFPA 58, §3.2 [§1.7].

(b) Engineering. The Commission does not adopt language in any NFPA 58 rule such as "sound engineering practice," "accepted engineering practice," "good engineering practice," "sound engineering design," or similar language that might be understood to mean or refer to the practice of engineering. The omission of a specific NFPA 58 rule or other NFPA pamphlets containing such language from Table 1 of §9.403 of this title (relating to Sections in NFPA 58 Not Adopted by Reference, and Adopted with Changes or [,] Additional Requirements[, or Corrections]) is inadvertent and shall not be read or understood as requiring, allowing, or approving the unlicensed practice of engineering or any other professional occupation requiring a license.

(c) Container capacity, piping system, and appliance exceptions. The Commission does not adopt language in any NFPA rule, chart, figure, or table pertaining to any LP-gas container having a water capacity of one gallon (4.2 pounds LP-gas capacity) or less, or to any LP-gas piping system or appliance attached or connected to such a container.

§9.403. Sections in NFPA 58 Not Adopted by Reference, and Adopted with Changes or [,] Additional Requirements[, or Corrections].

(a) Table 1 of this section lists certain NFPA 58 sections which the Commission does not adopt because the Commission's corresponding rules are more pertinent to LP-gas activities in Texas, or which the Commission adopts with changed language or additional requirements in order to address the Commission's existing rules[, or with corrections listed in the Errata dated November 19, 2001, issued by NFPA to correct typographical or other errors in the published NFPA 58 pamphlet. According to NFPA, these errors may be corrected in future printings].

Figure: 16 TAC §9.403(a)

(b) (No change.)

[(c) For rows in Table 1 of this section that refer to "errata," some versions of the 2001 edition of NFPA 58 included errors that were corrected by NFPA in later printings. The Table shows the correct wording.]

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on October 10, 2007.

TRD-200704842
Mary Ross McDonald
Managing Director
Railroad Commission of Texas
Earliest possible date of adoption: November 25, 2007
For further information, please call: (512) 475-1295

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SUBCHAPTER A. GENERAL REQUIREMENTS

16 TAC §9.32

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Railroad Commission of Texas or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Railroad Commission of Texas proposes the repeal of §9.32, relating to LP-Gas Advisory Committee. The Commission proposes the repeal because by the terms of the rule, the LP-gas advisory committee ceased to exist on August 31, 2006.

James Osterhaus, Deputy Director, Safety Division, has determined that for each year of the first five years the proposed repeal will be in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the repeal.

Mr. Osterhaus has also determined that for each year of the first five years the repeal is in effect, the public benefit anticipated as a result of enforcing the repeal will be improved efficiency of the Commission's LP-gas regulatory operation. There is no anticipated economic cost to individuals or small businesses required to comply with the proposed repeal.

Texas Government Code, §2006.002 requires a state agency considering adoption of a rule that would have an adverse economic effect on small businesses or micro-businesses to reduce the effect if doing so is legal and feasible considering the purpose of the statutes under which the rule is to be adopted. Mr. Osterhaus has determined that there is no adverse economic effect on small businesses or micro-businesses, because the repeal proposed in this rulemaking is to eliminate a rule establishing an advisory committee that had already ceased to exist.

Comments on the proposal may be submitted to Rules Coordinator, Office of General Counsel, Railroad Commission of Texas, P.O. Box 12967, Austin, Texas 78711-2967; online at www.rrc.state.tx.us/rules/commentform.html; or by electronic mail to rulescoordinator@rrc.state.tx.us. The Commission will accept comments for 30 days after publication in the *Texas Register*. The Commission encourages all interested persons to submit comments no later than the deadline. The Commission cannot guarantee that comments submitted after the deadline will be considered. For further information, call Mr. Osterhaus at (512) 463-6692. The status of Commission rulemakings in progress is available at www.rrc.state.tx.us/rules/proposed.html.

The Commission proposes the repeal under Texas Natural Resources Code, §113.051, which authorizes the Commission to adopt rules relating to any and all aspects or phases of the LP-gas industry that will protect or tend to protect the health, welfare, and safety of the general public; and Texas Government Code, Chapter 2110, State Agency Advisory Committees.

Statutory authority: Texas Natural Resources Code, §113.051, and Texas Government Code, Chapter 2110.

Cross-reference to statute: Texas Natural Resources Code, Chapter 113, and Texas Government Code, Chapter 2110.

Issued in Austin, Texas on October 9, 2007.

§9.32. LP-Gas Advisory Committee.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on October 10, 2007.

TRD-200704837
Mary Ross McDonald
Managing Director
Railroad Commission of Texas
Earliest possible date of adoption: November 25, 2007
For further information, please call: (512) 475-1295

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CHAPTER 11. SURFACE MINING AND RECLAMATION DIVISION

The Railroad Commission of Texas proposes the repeal of all rules in 16 TAC Chapter 11, relating to Surface Mining and Reclamation Division, and proposes several new rules under newly titled Chapter 11, relating to Uranium Exploration and Surface Mining. The rules proposed for repeal are §§11.1, 11.12, 11.21, 11.31, 11.33, 11.34, 11.37, 11.52, 11.53, 11.71, 11.72, 11.81, 11.82, 11.91 - 11.100, 11.111 - 11.115, 11.131 - 11.139, 11.151 - 11.154, 11.161 - 11.167, 11.181, 11.182, 11.191 - 11.194, and 11.201 - 11.206. The proposed new rules are as follows: In Subchapter A, entitled General Administrative Rules, new §§11.1 - 11.4, relating to Practice and Procedure; Definitions; Permit Processing; and Temporary Orders Prior to Notice and Hearing. In new Subchapter B, entitled Permits for Uranium Exploration and Surface Mining, new §§11.21 - 11.33, and 11.41 - 11.46, relating to Purpose and Authority; Applicability; Confidentiality; Uranium Exploration Permit Required; Application for Uranium Exploration Activity; Uranium Exploration Permit Application Fees; Uranium Exploration Reclamation and Plugging Requirements; Uranium Exploration Plugging Report; Uranium Exploration Permit Renewal; Uranium Exploration Permit Amendment; Uranium Exploration Permit Transfer; Uranium Exploration Application Notification by the Commission; Information Provided to Groundwater Conservation Districts; Uranium Surface Mining Permits; Bonding, Insurance, and Payment of Fees; Surface Mining Permit Renewal; Surface Mining Permit Transfer; Surface Mining Permit Approval or Denial; and Permit Changes. In new Subhapter C, entitled Designation of Lands Unsuitable for Surface Mining, new §11.71 and §11.72, relating to Petition Procedure and Determination; and Elements of Unsuitability. In new Subchapter D, entitled Surface Mining Reclamation, Mine Closing, and Release, new §§11.81 - 11.86, relating to Reclamation Plan; Reclamation Standards; Alternative Reclamation Methods; Amendments; Surface Mine Closing; and Release. In new Subchapter E, entitled Reporting, Record Maintenance and Performance Bonds, new §§11.91 - 11.94, relating to Annual Report; Maintenance of Records; Performance Bonds; and Release or Reduction of Bonds. In new Subchapter F, entitled Enforcement by the Commission, new §§11.151 - 11.165, relating to Scope; Inspections; Time and Procedures for Inspection; Violations Creating Imminent Danger or Causing Imminent Harm; Violations Not Creating Imminent Danger or Causing Imminent Harm; Continuous Violations; Notice of Violation or Cessation Order; Civil Action; Injunctive Relief and Civil Penalty; Administrative Penalty; Penalty Assessment Procedures; Payment of Penalty and Refund; Criminal Penalty for Violating Permits and Orders; Criminal Penalty for Corporate Permittee; and Criminal Penalty for False Statement, Representation, or Certification.

Although all the proposed new rules will be designated in the *Texas Register* with underlining to indicate new wording, in fact in only a few of the rules have substantively different wording proposed from what is currently in effect. Most of the rules have only minor differences from the current wording, as explained in the following paragraphs. The following table provides a listing of the old and new rule numbers and titles:

Figure: 16 TAC Chapter 11 - Preamble

Rules that are brand-new and not currently found in Chapter 11

The proposed rules that are new and not currently found in Chapter 11 are §§11.23 - 11.33 and §§11.151 - 11.165. New rules

§§11.23 - 11.33 are proposed to address expanded statutory authority for uranium exploration enacted by House Bill 3837, 80th Legislature (2007).

Proposed new §11.23 establishes criteria for maintaining confidentiality of certain information contained in an uranium exploration or mining permit, if identified as such by the applicant and determined by the Commission not to be essential for public review. This rule largely mirrors the language in Texas Natural Resources Code, §131.048.

Proposed new §11.24 sets forth the requirement to obtain a permit for uranium exploration prior to conducting such activity, and outlines the scope of such permit, including a general description of the purposes and authority granted by a permit. This section also establishes the permit term for exploration and the conditions for permit renewal.

The minimum information requirements for a uranium exploration permit are set forth in proposed new §11.25. This rule establishes that, in addition to providing administrative information regarding the applicant, the names and addresses of each entity that the Commission is required to notify under proposed new §11.32 in this rulemaking must be provided. Proposed new §11.25 also requires the inclusion of satisfactory operation and reclamation plans in a permit application, a map or maps of the area of proposed exploration, and a list of permit-area surface owners and mineral owners that specifically identifies those mineral owners from whom right of entry to conduct exploration activities has been obtained. In addition, sufficient geologic and hydrologic information for the proposed area of exploration must be included to support the proposed plan for borehole plugging and well installation.

Proposed new §11.26 pertains to uranium exploration permit application, amendment, and renewal fees. An application fee consists of an amount equal to $0.10 per acre for each acre included within the proposed exploration area identified on a map as part of the application plus an amount equal to $1,500 for each unit of 50 exploration boreholes anticipated to be drilled during the twelve-month permit term. An application for a permit amendment that proposes additional exploration areas and/or an increase in the number of boreholes drilled must be accompanied by the appropriate fee, which is calculated using the per-acre and borehole rates for original permit applications. Permit renewal applications must be accompanied by a permit renewal application fee calculated on the same basis.

Proposed new §11.27 and §11.28 establish technical requirements for surface reclamation and borehole plugging and reporting thereof, necessary to minimize any deleterious effects to the explored area. Section 11.27 establishes acceptable plugging materials and methodology and a reasonable time frame for effecting the plugging of exploration boreholes, as well as a requirement for marking plugged holes in the field to facilitate inspection following plugging. Proposed new §11.28 establishes a requirement for filing an annual report of plugging, to include a notarized affidavit in which all drilled boreholes are listed, along with the drilled depth, borehole coordinates and plugging method, and the dates of drilling and plugging for each borehole.

Proposed new §§11.29, 11.30 and 11.31 establish the minimum requirements, respectively, for the content of applications for renewal, revision and transfer of exploration permits.

Proposed new §11.32 establishes the requirements for notifying certain entities in the area of proposed activity for a new exploration permit. These entities, to be identified by name and address in the permit application, pursuant to proposed new §11.25, include the local groundwater conservation district, if present, the mayor and health authority of each municipality in the locality, the county judge and county health authority of each county in which the proposed exploration is to occur, and each member of the Texas legislature representing the area in which the proposed exploration is to occur.

Proposed new §11.33 requires that all information provided by a permittee to the local groundwater conservation district as required by the statute must also be provided to the Commission.

The Commission proposes new §§11.151 - 11.165 under statutory authority granted in Texas Natural Resources Code, Chapter 131, Subchapter G, in 1977, and as amended in 1983, 1985, and 2007 to facilitate enforcement of exploration, operation, and reclamation performance requirements. The enforcement rules are now proposed to be applicable to both uranium exploration activities and surface mining operations.

Proposed new §11.151 describes the scope of the newly proposed enforcement rules, indicating, as clarified in the 2007 amendments to Texas Natural Resources Code, Chapter 131, that enforcement provisions apply to both exploration and surface mining activities.

Proposed new §11.152 and §11.153 address the authority of the Commission to conduct inspections in permit areas at reasonable times and during normal operating hours. An inspector will file an inspection report as a result of an inspection as a part of the official Commission records and will furnish a copy to the permittee.

Proposed new §11.154 provides that if, as a result of an inspection, a Commission inspector determines that a condition or practice exists that is causing or will cause significant, imminent harm to land, air, or water resources or immediate danger to the health or safety of the public, the inspector may order an immediate cessation of exploration or mining activities. A time and place for a prompt Commission hearing regarding the cessation would be identified in the cessation order. The Commission finds that the degree of imminence and magnitude of environmental harm or public danger will dictate the manner of notice of such hearing to relevant parties.

In proposed new §11.155, similar Commission authority is addressed where a permittee is in violation of a permit condition, but that violation is not causing significant, imminent harm to land, air or water resources or immediate danger to the health or safety of the public. In this event, the inspector may issue a notice of violation that sets forth a time for abatement of the violation. The period of abatement may be extended for good cause; however, if abatement does not occur, the Commission may then issue, by written finding, an order of cessation of activities in the area of the violation. The permittee may request a hearing to be held with respect to the cessation order, which will remain in effect until the order is modified, vacated, or terminated, or the violation is abated.

Proposed new §11.156 addresses conditions, identified in an inspection or inspections, where a pattern of continuing violations is occurring or has occurred. The Commission may then issue an order to the permittee requiring that the permittee show cause as to why the permit should not be suspended or revoked. A public hearing will subsequently be held in accordance with procedures set forth in the Administrative Procedure Act.

Proposed new §11.157 sets forth the information required to be in notices of violation and cessation orders. Such documents will contain a description of the violation and the pertinent regulation or statute, the remedial action needed to abate the violation, the time period established for that abatement, and a description of the permit area where the violation applies. This section also sets forth the criteria for extension of time to accomplish abatement actions, providing that such extension must be documented in writing and may not be issued on the basis of lack of diligence by the permittee to correct the violation.

Proposed new §11.158 mirrors the requirements in Texas Natural Resources Code, §131.265, and allows for the issuance of injunctions, restraining orders or other remedies for various actions, for example, when a permittee fails or refuses to comply with an order of the Commission, refuses to allow admission of or inspection by an authorized representative of the Commission, or refuses to provide or to allow access to and copying of records necessary to the Commission to carry out provisions of the statute.

Similarly, proposed new §11.159 mirrors the requirements in Texas Natural Resources Code, §131.266, and sets forth the option of the Commission to institute a civil suit for injunctive relief to restrain a permittee from continuing or threatening to continue a violation, or for assessment of a civil penalty of up to $5,000 per day of violation. In addition, this rule sets forth the conditions the Commission may consider in determining the amount of civil penalty assessed.

Administrative civil penalties may also be assessed, as set forth in proposed new §11.160, and in accordance with the procedures established in proposed new §11.161. Payment procedures for such penalties are established in proposed new §11.162. Such penalty may not exceed $10,000 per violation per day that a violation continues, and may be assessed only after an opportunity for public hearing is provided to the permittee and an order is issued by the Commission requiring that the penalty be paid. The Commission will notify a permittee of the penalty amount within 30 days following issuance of a notice of violation or cessation order, and the permittee must submit the assessed penalty amount within 30 days following notification.

Proposed new §§11.163, 11.164, and 11.165, mirror underlying statutory authority and are proposed as a convenience and as a source of information.

Rules that are changing neither rule number nor title

One rule, proposed new §11.1, relating to Practice and Procedure, is proposed with the same rule number and title. The Commission proposes no changes to this rule, only re-adoption.

Rules that are changing only rule numbers

One new rule, §11.92 (currently §11.193, relating to Maintenance of Records), is being proposed with no changes from the current rule text; only the rule number is proposed to be changed for better organization of this chapter. The Commission proposes no other changes to this rule.

Rules that are changing rule numbers and only statutory, cross-reference, or non-substantive corrections, and/or are being combined with other current rules

Several proposed rules, in addition to being proposed with new rule numbers, include corrections or updates to statutory references, internal cross-references to other rules within Chapter 11, or non-substantive corrections such as the name of a state agency. Some of the current rules have been combined and reformatted for better organization of this chapter, and therefore may contain revised, non-substantive text changes because of this reformatting. These rules are §§11.3, 11.4, 11.43 - 11.46, 11.71, 11.72, 11.81 - 11.85, 11.91, and 11.93. Specifically, proposed new §11.45 includes a change to correct the name of a state agency; all other rules in this group have only statutory or internal cross-reference corrections or revised, non-substantive text changes.

Rules that are changing rule numbers and have both statutory corrections and other substantive changes

Five rules, in addition to being proposed with new rule numbers, also include statutory corrections and other substantive wording changes. These rules are §§11.2, 11.21, 11.22, 11.41, and 11.42. In §11.2(2), (12), and (18), the Commission proposes a consolidation of current rules containing definitions and corrections from the current wording of the definitions of "Act," "party," and "rules" to reflect the current titles of the statutes. In §11.2(21), the Commission proposes new wording in the definition of "surface mining permit" to clarify that a permit does not include a discharge permit issued by the Commission pursuant to the Texas Uranium Exploration, Surface Mining, and Reclamation Act, Texas Natural Resources Code, Chapter 131, Subchapter H, or an exploration permit issued by the Commission pursuant to Subchapter B of this chapter.

In §11.21 and §11.22, the Commission proposes to add references to "exploration" and "explored lands" pursuant to the new statutory authority in the Act.

Section 11.41 includes a proposed increase in the initial application fee from $200 to $400 and to indicate that fee payments should be made to the Commission. Section 11.42 also includes a change to indicate that fee payments should be made to the Commission. This increase is a result of changes made in 1983 to Texas Natural Resources Code, §131.135(b). The Commission finds the fee increase is reasonable because the anticipated cost of reviewing an application is greater than the current amount.

Melvin Hodgkiss, Director, Surface Mining and Reclamation Division, has determined that during each year of the first five years the proposed repeals and new sections would be in effect, the net effect on state government will be zero. The Commission's uranium mining regulatory program currently is not funded. Anticipated program costs to implement regulatory requirements to the industry result from staffing needs for uranium exploration permit review and site inspection activities. The new proposed fees for exploration permitting specified in new rule §11.26 are anticipated to recover the costs of the regulatory program.

Mr. Hodgkiss has determined that during each year of the first five years the proposed rules would be in effect will increase the economic cost to the mining industry by a total of $185,503. This amount is based on estimated manpower needs and will be derived from a proposed annual fee of $0.10 per permit acre and a fee of $1,500 for each unit of 50 exploration boreholes drilled during the annual permit term. Mr. Hodgkiss estimates an average of 15 initial or permit renewal applications per year with an average of 3,670 acres and 400 boreholes per permit, yielding an estimated $185,505 per year. There are no fiscal implications for local governments.

Mr. Hodgkiss has determined that the public benefit resulting from the proposed fee structure for uranium exploration activities is the alignment of fees paid by the uranium exploration and

mining industry with the costs incurred by the Commission to implement the regulatory program established in House Bill 3837, 80th Legislature (2007).

Because uranium exploration and mining companies are not required to make filings with the Commission reporting number of employees, labor costs, amount of sales or gross receipts, the Commission cannot definitively determine whether a particular operator may be a small business or a micro-business, as those terms are defined in Texas Government Code, §2006.001. For purposes of performing the comparison mandated by Texas Government Code, §2006.002(c), the Commission has analyzed the estimated maximum impact of the proposed new rules on three hypothetical uranium exploration companies classified based on an estimated number of employees. One of the companies would be an individual investor or group of investors that could be characterized as a micro-business under Texas Government Code, §2006.001(2), and may have as few as three actual employees whose activities are only the management of exploration properties. Another company would be characterized as a small business under Texas Government Code, §2006.001(2), and may have 50 employees. These companies can be compared to a hypothetical company characterized as one of the largest uranium exploration and mining businesses under Texas Government Code, §2006.001(2), and could easily have as many as 500 employees. For these hypothetical businesses, the Commission has estimated the cost to each, on a per-employee basis, for an average exploration permit area and average drilling activity as identified by historical data available to the Commission to date. On average, the Commission estimates that the annual exploration permit fee would be $12,367. For the micro-business, this amounts to approximately $4,122 per actual employee, for the small business, approximately $247 per employee; whereas, for the largest company, the cost per employee is less than $25 per employee.

The Commission's experience with uranium permitting under the current rules indicates that the larger companies hold several permits of a larger total acreage, whereas the smallest companies generally conduct exploration on known prospects of a small size, ranging from about 150-1,000 acres. These factors would both tend to greatly reduce the likely actual per-employee cost for the smaller businesses and modestly increase the actual per-employee cost for the largest businesses. Other factors, which might affect an assessment of the economic burden of regulating uranium exploration, such as net value of the mineral resource in the average explored area, cannot be assessed because this information is not available to the Commission. Therefore, the Commission finds that this comparison substantially complies with the requirement under Texas Government Code, §§2006.002 and 2001.024(a)(8), and Mr. Hodgkiss has determined that there will be only limited economic effects on small businesses or micro-businesses as a result of the proposed rulemaking.

The proposed rulemaking will not affect a local economy; therefore, the Commission has not prepared a local employment impact statement pursuant to Texas Government Code, §2002.022.

Comments on the proposal may be submitted to Rules Coordinator, Office of General Counsel, Railroad Commission of Texas, P.O. Box 12967, Austin, Texas 78711-2967; online at http://www.rrc.state.tx.us/rules/commentform.html; or by electronic mail to rulescoordinator@ rrc.state.tx.us and should refer to SMRD Docket No. 3-07. Comments will be accepted until 5:00 p.m. on Monday, November 26, 2007, which is 31 days after publication in the *Texas Register*. The Commission finds that this comment period is reasonable because the proposal as well as an online comment form will be available on the Commission's web site no later than the day after the open meeting at which the Commission approves publication of the proposal, giving interested persons over two additional weeks to review, analyze, draft, and submit comments. The Commission encourages all interested persons to submit comments no later than the deadline. The Commission cannot guarantee that comments submitted after the deadline will be considered. For further information, call Melvin Hodgkiss, Director, Surface Mining and Reclamation Division, at (512) 463-6901. The status of all Commission rulemakings in progress is available at www.rrc.state.tx.us/rules/proposed.html.

SUBCHAPTER A. RULES OF PRACTICE AND PROCEDURE

16 TAC §11.1

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Railroad Commission of Texas or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Commission proposes the repeals under Texas Natural Resources Code, §131.021, which authorizes the Commission to promulgate rules pertaining to surface uranium mining and exploration operations; Texas Natural Resources Code, §131.355, which authorizes the Commission to impose fees and mandates the fee collection authorized in House Bill 3837, 80th Legislature (2007) and House Bill 1, Article VI, Railroad Commission Rider 13, 80th Legislature (2007), which requires the Commission to assess fees sufficient to generate during the 2008 - 2009 biennium revenue to cover the contingent general revenue appropriation.

Statutory authority: Texas Natural Resources Code, §§131.001, *et seq*., as amended by House Bill 3837, 80th Legislature (2007).

Cross-reference to statute: Texas Natural Resources Code, §§131.001, *et seq*., as amended by House Bill 3837, 80th Legislature (2007).

Texas Natural Resources Code, §§131.001, *et seq*., as amended by House Bill 3837, 80th Legislature (2007) is affected by the proposed repeals.

Issued in Austin, Texas on October 9, 2007.

§11.1. Practice and Procedure.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on October 9, 2007.

TRD-200704810
Mary Ross McDonald
Managing Director
Railroad Commission of Texas
Earliest possible date of adoption: November 25, 2007
For further information, please call: (512) 475-1295

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SUBCHAPTER B. SPECIAL EXCEPTIONS TO THE RULES OF PRACTICE AND PROCEDURE--URANIUM MINING

DIVISION 1. DEFINITIONS AND GENERAL RULES

16 TAC §11.12

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Railroad Commission of Texas or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Commission proposes the repeals under Texas Natural Resources Code, §131.021, which authorizes the Commission to promulgate rules pertaining to surface uranium mining and exploration operations; Texas Natural Resources Code, §131.355, which authorizes the Commission to impose fees and mandates the fee collection authorized in House Bill 3837, 80th Legislature (2007) and House Bill 1, Article VI, Railroad Commission Rider 13, 80th Legislature (2007), which requires the Commission to assess fees sufficient to generate during the 2008 - 2009 biennium revenue to cover the contingent general revenue appropriation.

Statutory authority: Texas Natural Resources Code, §§131.001, *et seq*., as amended by House Bill 3837, 80th Legislature (2007).

Cross-reference to statute: Texas Natural Resources Code, §§131.001, *et seq*., as amended by House Bill 3837, 80th Legislature (2007).

Texas Natural Resources Code, §§131.001, *et seq*., as amended by House Bill 3837, 80th Legislature (2007) is affected by the proposed repeals.

Issued in Austin, Texas on October 9, 2007.

§11.12. Definitions.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on October 9, 2007.

TRD-200704811
Mary Ross McDonald
Managing Director
Railroad Commission of Texas
Earliest possible date of adoption: November 25, 2007
For further information, please call: (512) 475-1295

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DIVISION 2. PARTIES

16 TAC §11.21

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Railroad Commission of Texas or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Commission proposes the repeals under Texas Natural Resources Code, §131.021, which authorizes the Commission to promulgate rules pertaining to surface uranium mining and exploration operations; Texas Natural Resources Code, §131.355, which authorizes the Commission to impose fees and mandates the fee collection authorized in House Bill 3837, 80th Legislature (2007) and House Bill 1, Article VI, Railroad Commission Rider 13, 80th Legislature (2007), which requires the Commission to assess fees sufficient to generate during the 2008-2009 biennium revenue to cover the contingent general revenue appropriation.

Statutory authority: Texas Natural Resources Code, §§131.001, *et seq*., as amended by House Bill 3837, 80th Legislature (2007).

Cross-reference to statute: Texas Natural Resources Code, §§131.001, *et seq*., as amended by House Bill 3837, 80th Legislature (2007).

Texas Natural Resources Code, §§131.001, *et seq*., as amended by House Bill 3837, 80th Legislature (2007) is affected by the proposed repeals.

Issued in Austin, Texas on October 9, 2007.

§11.21. Who May Appear.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on October 9, 2007.

TRD-200704812
Mary Ross McDonald
Managing Director
Railroad Commission of Texas
Earliest possible date of adoption: November 25, 2007
For further information, please call: (512) 475-1295

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DIVISION 3. NOTICE AND HEARING

16 TAC §§11.31, 11.33, 11.34, 11.37

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Railroad Commission of Texas or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Commission proposes the repeals under Texas Natural Resources Code, §131.021, which authorizes the Commission to promulgate rules pertaining to surface uranium mining and exploration operations; Texas Natural Resources Code, §131.355, which authorizes the Commission to impose fees and mandates the fee collection authorized in House Bill 3837, 80th Legislature (2007) and House Bill 1, Article VI, Railroad Commission Rider 13, 80th Legislature (2007), which requires the Commission to assess fees sufficient to generate during the 2008-2009 biennium revenue to cover the contingent general revenue appropriation.

Statutory authority: Texas Natural Resources Code, §§131.001, *et seq*., as amended by House Bill 3837, 80th Legislature (2007).

Cross-reference to statute: Texas Natural Resources Code, §§131.001, *et seq*., as amended by House Bill 3837, 80th Legislature (2007).

Texas Natural Resources Code, §§131.001, *et seq*., as amended by House Bill 3837, 80th Legislature (2007) is affected by the proposed repeals.

Issued in Austin, Texas on October 9, 2007.

§11.31. Public Notice.

§11.33. Comments and Objections.

§11.34. Public Hearing.

§11.37. Revised Notice.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on October 9, 2007.

TRD-200704813
Mary Ross McDonald
Managing Director
Railroad Commission of Texas
Earliest possible date of adoption: November 25, 2007
For further information, please call: (512) 475-1295

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DIVISION 4. DECISIONS OF COMMISSION

16 TAC §11.52, §11.53

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Railroad Commission of Texas or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Commission proposes the repeals under Texas Natural Resources Code, §131.021, which authorizes the Commission to promulgate rules pertaining to surface uranium mining and exploration operations; Texas Natural Resources Code, §131.355, which authorizes the Commission to impose fees and mandates the fee collection authorized in House Bill 3837, 80th Legislature (2007) and House Bill 1, Article VI, Railroad Commission Rider 13, 80th Legislature (2007), which requires the Commission to assess fees sufficient to generate during the 2008-2009 biennium revenue to cover the contingent general revenue appropriation.

Statutory authority: Texas Natural Resources Code, §§131.001, *et seq*., as amended by House Bill 3837, 80th Legislature (2007).

Cross-reference to statute: Texas Natural Resources Code, §§131.001, *et seq*., as amended by House Bill 3837, 80th Legislature (2007).

Texas Natural Resources Code, §§131.001, *et seq*., as amended by House Bill 3837, 80th Legislature (2007) is affected by the proposed repeals.

Issued in Austin, Texas on October 9, 2007.

§11.52. Decision without Public Hearing.

§11.53. Temporary Orders Prior to Notice and Hearing.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on October 9, 2007.

TRD-200704814
Mary Ross McDonald
Managing Director
Railroad Commission of Texas
Earliest possible date of adoption: November 25, 2007
For further information, please call: (512) 475-1295

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SUBCHAPTER C. SUBSTANTIVE RULES--URANIUM MINING

DIVISION 1. INTRODUCTION

16 TAC §11.71, §11.72

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Railroad Commission of Texas or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Commission proposes the repeals under Texas Natural Resources Code, §131.021, which authorizes the Commission to promulgate rules pertaining to surface uranium mining and exploration operations; Texas Natural Resources Code, §131.355, which authorizes the Commission to impose fees and mandates the fee collection authorized in House Bill 3837, 80th Legislature (2007) and House Bill 1, Article VI, Railroad Commission Rider 13, 80th Legislature (2007), which requires the Commission to assess fees sufficient to generate during the 2008-2009 biennium revenue to cover the contingent general revenue appropriation.

Statutory authority: Texas Natural Resources Code, §§131.001, *et seq*., as amended by House Bill 3837, 80th Legislature (2007).

Cross-reference to statute: Texas Natural Resources Code, §§131.001, *et seq*., as amended by House Bill 3837, 80th Legislature (2007).

Texas Natural Resources Code, §§131.001, *et seq*., as amended by House Bill 3837, 80th Legislature (2007) is affected by the proposed repeals.

Issued in Austin, Texas on October 9, 2007.

§11.71. Purpose and Authority.

§11.72. Applicability.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on October 9, 2007.

TRD-200704815
Mary Ross McDonald
Managing Director
Railroad Commission of Texas
Earliest possible date of adoption: November 25, 2007
For further information, please call: (512) 475-1295

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DIVISION 2. DEFINITIONS

16 TAC §11.81, §11.82

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Railroad Commission of Texas or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Commission proposes the repeals under Texas Natural Resources Code, §131.021, which authorizes the Commission to promulgate rules pertaining to surface uranium mining and exploration operations; Texas Natural Resources Code, §131.355,

which authorizes the Commission to impose fees and mandates the fee collection authorized in House Bill 3837, 80th Legislature (2007) and House Bill 1, Article VI, Railroad Commission Rider 13, 80th Legislature (2007), which requires the Commission to assess fees sufficient to generate during the 2008-2009 biennium revenue to cover the contingent general revenue appropriation.

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Cross-reference to statute: Texas Natural Resources Code, §§131.001, *et seq*., as amended by House Bill 3837, 80th Legislature (2007).

Texas Natural Resources Code, §§131.001, *et seq*., as amended by House Bill 3837, 80th Legislature (2007) is affected by the proposed repeals.

Issued in Austin, Texas on October 9, 2007.

§11.81. Statutory Definitions.

§11.82. Regulatory Definitions.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on October 9, 2007.

TRD-200704816
Mary Ross McDonald
Managing Director
Railroad Commission of Texas
Earliest possible date of adoption: November 25, 2007
For further information, please call: (512) 475-1295

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DIVISION 3. SURFACE MINING PERMITS

16 TAC §§11.91 - 11.100

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Railroad Commission of Texas or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Commission proposes the repeals under Texas Natural Resources Code, §131.021, which authorizes the Commission to promulgate rules pertaining to surface uranium mining and exploration operations; Texas Natural Resources Code, §131.355, which authorizes the Commission to impose fees and mandates the fee collection authorized in House Bill 3837, 80th Legislature (2007) and House Bill 1, Article VI, Railroad Commission Rider 13, 80th Legislature (2007), which requires the Commission to assess fees sufficient to generate during the 2008 - 2009 biennium revenue to cover the contingent general revenue appropriation.

Statutory authority: Texas Natural Resources Code, §131.001, *et seq*., as amended by House Bill 3837, 80th Legislature (2007).

Cross-reference to statute: Texas Natural Resources Code, §131.001, *et seq*., as amended by House Bill 3837, 80th Legislature (2007).

Texas Natural Resources Code, §131.001, *et seq*., as amended by House Bill 3837, 80th Legislature (2007) is affected by the proposed repeals.

Issued in Austin, Texas on October 9, 2007.

§11.91. Term.

§11.92. Permit Application.

§11.93. Elements of Permit Application.

§11.94. Application Approval.

§11.95. Bonding, Insurance, Payment of Fees.

§11.96. Permit Issuance.

§11.97. Renewal.

§11.98. Transfer.

§11.99. Permit Approval.

§11.100. Permit Denial.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on October 9, 2007.

TRD-200704817
Mary Ross McDonald
Managing Director
Railroad Commission of Texas
Earliest possible date of adoption: November 25, 2007
For further information, please call: (512) 475-1295

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DIVISION 4. TERMINATION, SUSPENSION, REVISION, AND CORRECTION OF PERMITS

16 TAC §§11.111 - 11.115

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Railroad Commission of Texas or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Commission proposes the repeals under Texas Natural Resources Code, §131.021, which authorizes the Commission to promulgate rules pertaining to surface uranium mining and exploration operations; Texas Natural Resources Code, §131.355, which authorizes the Commission to impose fees and mandates the fee collection authorized in House Bill 3837, 80th Legislature (2007) and House Bill 1, Article VI, Railroad Commission Rider 13, 80th Legislature (2007), which requires the Commission to assess fees sufficient to generate during the 2008-2009 biennium revenue to cover the contingent general revenue appropriation.

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Texas Natural Resources Code, §131.001, *et seq*., as amended by House Bill 3837, 80th Legislature (2007) is affected by the proposed repeals.

Issued in Austin, Texas on October 9, 2007.

§11.111. Basis of Revocation and Suspension.

§11.112. Termination or Suspension with Consent.

§11.113. Revocation or Suspension without Consent.

§11.114. Revision on Motion or with Consent.

§11.115. Corrections.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on October 9, 2007.

TRD-200704818
Mary Ross McDonald
Managing Director
Railroad Commission of Texas
Earliest possible date of adoption: November 25, 2007
For further information, please call: (512) 475-1295

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DIVISION 5. EXPLORATION ACTIVITIES

16 TAC §§11.131 - 11.139

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Railroad Commission of Texas or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

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Cross-reference to statute: Texas Natural Resources Code, §131.001, *et seq*., as amended by House Bill 3837, 80th Legislature (2007).

Texas Natural Resources Code, §131.001, *et seq*., as amended by House Bill 3837, 80th Legislature (2007) is affected by the proposed repeals.

Issued in Austin, Texas on October 9, 2007.

§11.131. Notice of Exploration through Overburden Removal.

§11.132. Content of Notice.

§11.133. Extraction of Minerals.

§11.134. Removal of Minerals.

§11.135. Lands Unsuitable for Surface Mining.

§11.136. Notice of Exploration Involving Hole Drilling.

§11.137. Permit.

§11.138. Reclamation and Plugging Requirements.

§11.139. Reporting.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on October 9, 2007.

TRD-200704819
Mary Ross McDonald
Managing Director
Railroad Commission of Texas
Earliest possible date of adoption: November 25, 2007
For further information, please call: (512) 475-1295

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DIVISION 6. RECLAMATION

16 TAC §§11.151 - 11.154

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Railroad Commission of Texas or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

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Texas Natural Resources Code, §131.001, *et seq*., as amended by House Bill 3837, 80th Legislature (2007) is affected by the proposed repeals.

Issued in Austin, Texas on October 9, 2007.

§11.151. Plan.

§11.152. Standards.

§11.153. Alternative Methods.

§11.154. Amendments.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on October 9, 2007.

TRD-200704820
Mary Ross McDonald
Managing Director
Railroad Commission of Texas
Earliest possible date of adoption: November 25, 2007
For further information, please call: (512) 475-1295

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DIVISION 7. DESIGNATION OF LANDS UNSUITABLE FOR SURFACE MINING

16 TAC §§11.161 - 11.167

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Railroad Commission of Texas or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

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Cross-reference to statute: Texas Natural Resources Code, §131.001, *et seq.*, as amended by House Bill 3837, 80th Legislature (2007).

Texas Natural Resources Code, §131.001, *et seq.*, as amended by House Bill 3837, 80th Legislature (2007) is affected by the proposed repeals.

Issued in Austin, Texas on October 9, 2007.

§11.161. Procedure for Petition.

§11.162. Determination of Petition Validity.

§11.163. Hearing on Petition.

§11.164. Petitions Not Received.

§11.165. Elements of Unsuitability.

§11.166. Notice of Existing Unsuitable Designation.

§11.167. Notice of Petition Determination.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on October 9, 2007.

TRD-200704821
Mary Ross McDonald
Managing Director
Railroad Commission of Texas
Earliest possible date of adoption: November 25, 2007
For further information, please call: (512) 475-1295

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DIVISION 8. MINE CLOSING AND RELEASE

16 TAC §11.181, §11.182

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Railroad Commission of Texas or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Commission proposes the repeals under Texas Natural Resources Code, §131.021, which authorizes the Commission to promulgate rules pertaining to surface uranium mining and exploration operations; Texas Natural Resources Code, §131.355, which authorizes the Commission to impose fees and mandates the fee collection authorized in House Bill 3837, 80th Legislature (2007) and House Bill 1, Article VI, Railroad Commission Rider 13, 80th Legislature (2007), which requires the Commission to assess fees sufficient to generate during the 2008-2009 biennium revenue to cover the contingent general revenue appropriation.

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Texas Natural Resources Code, §131.001, *et seq.*, as amended by House Bill 3837, 80th Legislature (2007) is affected by the proposed repeals.

Issued in Austin, Texas on October 9, 2007.

§11.181. Closing.

§11.182. Release.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on October 9, 2007.

TRD-200704822
Mary Ross McDonald
Managing Director
Railroad Commission of Texas
Earliest possible date of adoption: November 25, 2007
For further information, please call: (512) 475-1295

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DIVISION 9. REPORTS AND REPORTING

16 TAC §§11.191 - 11.194

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Railroad Commission of Texas or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Commission proposes the repeals under Texas Natural Resources Code, §131.021, which authorizes the Commission to promulgate rules pertaining to surface uranium mining and exploration operations; Texas Natural Resources Code, §131.355, which authorizes the Commission to impose fees and mandates the fee collection authorized in House Bill 3837, 80th Legislature (2007) and House Bill 1, Article VI, Railroad Commission Rider 13, 80th Legislature (2007), which requires the Commission to assess fees sufficient to generate during the 2008-2009 biennium revenue to cover the contingent general revenue appropriation.

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Texas Natural Resources Code, §131.001, *et seq*., as amended by House Bill 3837, 80th Legislature (2007) is affected by the proposed repeals.

Issued in Austin, Texas on October 9, 2007.

§11.191. Annual Report.

§11.192. Contents of Annual Report.

§11.193. Maintenance of Records.

§11.194. Release from Reporting Requirement.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on October 9, 2007.

TRD-200704823
Mary Ross McDonald
Managing Director
Railroad Commission of Texas
Earliest possible date of adoption: November 25, 2007
For further information, please call: (512) 475-1295

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DIVISION 10. PERFORMANCE BONDS

16 TAC §§11.201 - 11.206

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Railroad Commission of Texas or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

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Texas Natural Resources Code, §131.001, *et seq*., as amended by House Bill 3837, 80th Legislature (2007) is affected by the proposed repeals.

Issued in Austin, Texas on October 9, 2007.

§11.201. Amount of Bond.

§11.202. Personal Bond.

§11.203. Duration of Liability.

§11.204. Form of Bond or Collateral.

§11.205. Changes in Coverage.

§11.206. Release or Reduction of Bonds.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on October 9, 2007.

TRD-200704824
Mary Ross McDonald
Managing Director
Railroad Commission of Texas
Earliest possible date of adoption: November 25, 2007
For further information, please call: (512) 475-1295

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CHAPTER 11. URANIUM EXPLORATION AND SURFACE MINING

SUBCHAPTER A. GENERAL ADMINISTRATIVE RULES

16 TAC §§11.1 - 11.4

The Commission proposes the new rules under Texas Natural Resources Code, §131.021, which authorizes the Commission to promulgate rules pertaining to surface uranium mining and exploration operations; Texas Natural Resources Code, §131.355, which authorizes the Commission to impose fees and mandates the fee collection authorized in House Bill 3837, 80th Legislature (2007) and House Bill 1, Article VI, Railroad Commission Rider 13, 80th Legislature (2007), which requires the Commission to assess fees sufficient to generate during the 2008-2009 biennium revenue to cover the contingent general revenue appropriation.

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Texas Natural Resources Code, §§131.001, *et seq*., as amended by House Bill 3837, 80th Legislature (2007) is affected by the proposed new rules.

Issued in Austin, Texas on October 9, 2007.

§11.1. Practice and Procedure.

Proceedings before the Surface Mining and Reclamation Division of the Railroad Commission of Texas shall comply with Chapter 1 of this title (relating to Practice and Procedure).

§11.2. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Access roads--All roads located within the permit area and under the control of the operator of the surface mining operation.

(2) Act--The Texas Uranium Exploration, Surface Mining, and Reclamation Act, Texas Natural Resources Code, Chapter 131, *et seq.*

(3) Affected land or land affected--

(A) The area from which any materials are to be or have been displaced in a surface mining operation.

(B) The area on which any materials so displaced are to be or have been deposited.

(C) The haul roads and impoundment basins within the surface mining area.

(D) Other land whose natural state has been or will be disturbed as a result of the surface mining operations.

(4) Approximate original contour--That surface configuration achieved by backfilling and grading of the surface-mined area so that it resembles the surface configuration of the land prior to mining and blends into and complements the drainage pattern of the surrounding terrain, with all highwalls, spoil piles, and depressions eliminated, although the new contour may subsequently be at a moderately lower or higher elevation than existed prior to the surface mining operation.

(5) Commission--The Railroad Commission of Texas.

(6) Contiguous area--Includes all areas touching upon the boundaries of the land affected by the surface mining operation which the operator proposes to surface mine notwithstanding areas separated by terrain features such as streams, roads, gas lines, and power transmission lines.

(7) Exploration activity--The disturbance of the surface or subsurface for the purpose of or related to determining the location, quantity, or quality of a mineral deposit.

(8) Highwall--The vertical or nearly vertical wall of exposed strata adjacent to the site of a mineral deposit which results from surface mining excavation.

(9) Minerals--Uranium and uranium ore.

(10) Operator--The individual or entity, including any public or governmental agency, that is to engage or that is engaged in a surface mining operation, including any individual or entity whose permit has expired or been suspended or revoked.

(11) Overburden--All materials displaced in a mining operation which are not, or will not be, removed from the affected area.

(12) Party--As defined in the Administrative Procedure Act, Texas Government Code, Chapter 2001, and used in the Commission's general rules of practice and procedure and the Surface Mining and Reclamation Division's special rules of practice and procedure, does not mean "party to the administrative proceedings" as defined in the Texas Uranium Exploration, Surface Mining, and Reclamation Act, Texas Natural Resources Code, Chapter 131, *et seq*.

(13) Party to the administrative proceedings--Any person who has participated in a public hearing or filed a valid petition or timely objection pursuant to any provision of the Act.

(14) Permit area--All the area designated as such in the permit application and shall include all land affected by the surface mining operations during the term of the permit and may include any contiguous area that the operator proposes to surface mine after that time.

(15) Person--An individual, partnership, society, joint-stock company, firm, company, corporation, business organization, governmental agency, or any organization or association of citizens.

(16) Person affected--Any person who is a resident of a county or any county adjacent or contiguous to the county in which a mining operation is or is proposed to be located, including any person who is doing business or owns land in the county or adjacent or contiguous county and any local government and who demonstrates that the person has suffered or will suffer actual injury or economic damage.

(17) Reclamation--The process of restoring an area affected by a surface mining operation to its original or other substantially beneficial condition, considering past and possible future uses of the area and the surrounding topography.

(18) Rules--The regulations promulgated by the Commission pursuant to the authority of the Texas Uranium Exploration, Surface Mining, and Reclamation Act.

(19) Surface mining--The mining of minerals by removing the overburden lying above the natural deposit of minerals and mining directly from the natural deposits that are exposed and those aspects of underground mining having significant effects on the surface; provided, this definition shall not be construed to include in situ mining activities associated with the removal of uranium or uranium ore.

(20) Surface mining operation--Those activities conducted at or near the mining site and concomitant with the surface mining, including extraction, storage, processing and shipping of minerals and reclamation of the land affected.

(21) Surface mining permit--The written certification by the Commission that the named operator may conduct the surface mining operations described in the certification during the term of the surface mining permit and in the manner established in the certification. A surface mining permit does not include:

(A) a discharge permit issued by the Commission pursuant to the Texas Uranium Exploration, Surface Mining, and Reclamation Act, Texas Natural Resources Code, Chapter 131, Subchapter H; or

(B) an exploration permit issued by the Commission pursuant to Subchapter B of this chapter.

(22) Terracing--Grading where the steepest contour of the highwall shall not be at a greater angle from the horizontal than that set by the Commission in approving a specific reclamation plan calling for terracing with the table portion of the restored area flat and a flat terrace without depressions to hold water and with adequate provision for drainage, unless otherwise approved by the Commission.

(23) Topsoil--The unconsolidated mineral matter naturally present on the surface of the earth which has been subjected to and influenced by genetic and environmental factors of parent material, climate, macroorganisms and microorganisms, and topography, all acting over a period of time, and which is necessary for the growth and regeneration of vegetation on the surface of the earth.

(24) Toxic material--Any substance present in sufficient concentration or amount to cause injury or illness to plant, animal, or human life.

§11.3. Permit Processing.

(a) Public Notice Requirements. At the time of submission of an application for a surface mining permit, renewal, or transfer of an existing permit, or for release of all or part of a performance bond or deposit, the applicant shall publish notice of the application, which shall contain the following:

(1) ownership, location, and boundaries of the permit area sufficient so that the proposed operation or area covered by the bond to be reduced or released is readily locatable by local residents; and

(2) the location where the application is available for public inspection, which shall be with the county clerk(s) at the county courthouse(s) of the county(ies) where the surface mining operation(s) subject to the application are located.

(b) Public Location and Period of Publication. The notice required in subsection (a) of this section shall be placed in the local newspaper of greatest general circulation in the locality of the land affected at least once a week for four consecutive weeks.

(c) Commission Duties. The Commission shall contact various local governmental bodies, planning agencies, sewage and water treatment authorities, or water companies having jurisdiction over or in the locality in which the proposed surface mining will take place and the owners of record of all surface areas, within 500 feet of any part of the permit area, including any persons residing on the property of the permit area, notifying them of the applicant's intention to surface mine a particularly described tract of land and indicating the applicant's permit number, if any, and where a copy of the proposed mining and reclamation plan may be inspected.

(d) Comments and Objections. Any person affected or any federal, state, or local governmental agency or authority shall have the right to file written objections to the application for a surface mining permit or for the renewal, revision, or transfer of such a permit, or for release of all or part of the performance bond on deposit with the Commission within 30 days after the last publication of the notice referred to in subsection (a) of this section.

(1) Any comments received shall be made a part of the record; and

(2) the Commission shall furnish a copy of any received comments to the operator.

(e) Who May Appear.

(1) Any person or agency interested in a petition to declare lands unsuitable for surface mining or petition for adoption of rules may appear formally before the Commission.

(2) In all regularly docketed cases, a person affected in a permit application proceeding and any other person or agency interested in a proceeding to designate lands as unsuitable for surface mining activities, or to have such a designation terminated or petition for adoption of rules, may be permitted to appear in support of or in opposition to all or part of the remedy sought in the particular proceeding by filing notice of intent to participate at least five days in advance of the hearing date, and may present any relevant and proper testimony and evidence bearing upon the issues involved in the particular proceeding.

(f) Public Hearing. Within 45 days after the last publication of the notice required in subsection (a) of this section, the Commission shall determine, considering any objections which have been filed, if the application is of significance sufficient to warrant a public hearing and, if a hearing is determined to be warranted, the Commission shall:

(1) publish notice of the date, time, nature of the hearing, location of such public hearing, a statement of the legal authority and jurisdiction under which the hearing is to be held, a reference to the particular sections of the statutes and rules involved and a short and plain statement of the matters asserted in the newspaper of greatest general circulation in the locality at least once a week for three consecutive weeks prior to the scheduled hearing date, which date shall be set within 30 days after determination that a public hearing is warranted; and

(2) mail the same notice to the applicant or petitioner, and to all persons who have expressed by written notification to the Commission an interest in the pending permit application, revision, renewal, transfer, petition for designation of lands unsuitable for surface mining, or application for release or reduction of a performance bond and to any other person who, in the opinion of the Commission, should be notified.

(g) Revised Notice.

(1) In case the Commission determines that a material error is made in the notice of an application for a permit or notice of a public hearing, or that a material change is made in an application after notice has been issued, the Commission shall cause revised notice to be issued.

(2) If the material change or error affecting the content of the notice does not come to the attention of the Commission in sufficient time to make the correction in each of the newspaper publications, the Commission shall reschedule the hearing and/or appropriately readjust the time limitation schedules provided in this section.

(3) If the change or error requiring the revised notice is that of an applicant for a permit or an amendment the expense thereof shall be borne by that person; and, if the change or error is made by the agency, the agency will bear the expense.

(h) Decision without Public Hearing. If there has been no public hearing held pursuant to subsection (f) of this section, except in the instance of an application to revise a permit, the Commission shall notify the applicant and any objectors within 45 days after the last publication of the notice required in subsection (a) of this section whether the application has been approved or denied.

§11.4. Temporary Orders Prior to Notice and Hearing.

(a) The Commission may issue temporary orders relating to a surface mining operation without notice and hearing, or with the notice and hearing as the Commission considers practical under the circumstances, when necessary to enable action to be taken more expeditiously than is otherwise provided by the Act to effectuate the policy and purposes of the Act.

(b) If the Commission issues a temporary order under this authority without a hearing, and if the subject matter of the order is such as to require a public hearing under the Act, §131.163, the order shall set a time and place for a public hearing to be held. The hearing shall be held as soon after the temporary order is issued as is practical.

(c) At the hearing, the Commission shall affirm, modify, or set aside the temporary order; however, if the nature of the Commission's action requires, further proceedings shall be conducted as appropriate under provisions of the Administrative Procedure Act, Texas Government Code, Chapter 2001.

(d) The requirements of the Act, §131.159 and §131.160, concerning the time for notice, newspaper notice, and method of giving a person notice do not apply to the hearing, but general notice of the hearing shall be given that the Commission considers practical under the circumstances.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on October 9, 2007.

TRD-200704804
Mary Ross McDonald
Managing Director
Railroad Commission of Texas
Earliest possible date of adoption: November 25, 2007
For further information, please call: (512) 475-1295

SUBCHAPTER B. PERMITS FOR URANIUM EXPLORATION AND SURFACE MINING

16 TAC §§11.21 - 11.33, 11.41 - 11.46

The Commission proposes the new rules under Texas Natural Resources Code, §131.021, which authorizes the Commission to promulgate rules pertaining to surface uranium mining and exploration operations; Texas Natural Resources Code, §131.355, which authorizes the Commission to impose fees and mandates the fee collection authorized in House Bill 3837, 80th Legislature (2007) and House Bill 1, Article VI, Railroad Commission Rider 13, 80th Legislature (2007), which requires the Commission to assess fees sufficient to generate during the 2008-2009 biennium revenue to cover the contingent general revenue appropriation.

Statutory authority: Texas Natural Resources Code, §§131.001, *et seq.*, as amended by House Bill 3837, 80th Legislature (2007).

Cross-reference to statute: Texas Natural Resources Code, §§131.001, *et seq.*, as amended by House Bill 3837, 80th Legislature (2007).

Texas Natural Resources Code, §§131.001, *et seq.*, as amended by House Bill 3837, 80th Legislature (2007) is affected by the proposed new rules.

Issued in Austin, Texas on October 9, 2007.

§11.21. Purpose and Authority.

In order to prevent the adverse effects to society and the environment resulting from unregulated surface mining operations; to assure that the rights of surface landowners and other persons with a legal interest in the land or appurtenances are protected from such unregulated surface mining operations; to assure that surface mining operations are not conducted where reclamation as required by the Railroad Commission of Texas is not possible; to assure that exploration and surface mining operations are so conducted as to prevent unreasonable degradation to land and water resources; to assure that reclamation of all explored land and surface-mined land is accomplished as contemporaneously as practicable with the exploration activity and surface mining operation, recognizing that the extraction of minerals by responsible operations is an essential and beneficial economic activity, these sections are promulgated pursuant to the directive and authority of the Texas Uranium Exploration, Surface Mining, and Reclamation Act, Texas Natural Resources Code, Chapter 131, *et seq.*, and any amendment to it.

§11.22. Applicability.

(a) No person shall conduct any exploration activity or surface mining operation without having first obtained a permit issued by the Commission pursuant to the Act.

(b) The provisions of these sections shall not apply to:

(1) surface mining operations conducted on public lands regulated by the General Land Office of Texas; provided that such affected lands are reclaimed in a manner consistent with the provisions of these sections; and

(2) any land where the overburden has been removed and a mineral has been produced prior to June 21, 1975.

§11.23. Confidentiality.

Information submitted to the Commission concerning mineral deposits, including test borings, core samples, geophysical logs, or trade secrets or privileged commercial or financial information relating to the competitive rights of the applicant for an exploration permit or surface mining permit, and specifically identified as confidential by the applicant, if not essential for public review as determined by the Commission, shall not be disclosed by any member, agent, or employee of the Commission.

§11.24. Uranium Exploration Permit Required.

(a) A person may not conduct any uranium exploration activity unless the person holds an exploration permit issued by the Commission.

(b) An exploration permit shall:

(1) govern all activities associated with determining the location, quantity, or quality of uranium deposits;

(2) constitute authority from the Commission to drill exploration holes in the area covered in the permit for which right of entry for such activities has been obtained from the mineral owner; and

(3) establish the minimum requirements for plugging the exploration holes and reclaiming the drill sites.

(c) An exploration permit shall be valid for a period of one year from the date of issuance and shall be renewable upon submission of a renewal application to the Commission within 30 days prior to the expiration of the permit term.

(d) Upon completion of all exploration activity, an exploration permit must be renewed for an additional permit term or terms until:

(1) all boreholes and cased exploration wells have been properly plugged as evidenced by a plugging affidavit; and

(2) all cased exploration wells not plugged are:

(A) registered with the Texas Commission on Environmental Quality; or

(B) included in an area permit issued by the Texas Commission on Environmental Quality under Texas Water Code, Chapter 27.

§11.25. Application for Uranium Exploration Activity.

Any person planning to undertake uranium exploration activities involving the drilling of exploration holes shall file with the Commission, prior to commencing operations, an application for an exploration permit, upon forms furnished by the Commission. The application shall at a minimum contain the following information:

(1) an application fee in the amount required by §11.26 of this title (relating to Uranium Exploration Permit Application Fees) payable to the Railroad Commission of Texas;

(2) the name, address and telephone number of the applicant;

(3) the name, address and telephone number of the applicant's representative that will be present at and be responsible for conducting the exploration activity;

(4) the name of the county or counties in which the exploration activity is proposed together with the following contact information by name, address and telephone number:

(A) each groundwater conservation district in the area in which the exploration activity will occur;

(B) the mayor and health authority of each municipality in the area in which the exploration activity will occur;

(C) the county judge and health authority of each county in the area in which the exploration activity will occur; and

(D) each member of the Texas legislature who represents the area in which the exploration activity will occur;

(5) the names, addresses and telephone numbers of the landowners of record of the surface and subsurface mineral estate of

the exploration permit area, indexed to the land tracts identified on the map required in paragraph (6) of this subsection;

(6) a USGS topographic map or maps (scale 1:24,000) showing the proposed exploration area with the following information noted:

(A) exploration area boundary and acreage stated to the nearest acre; and

(B) the boundary of each land tract within the exploration permit area, with the tracts that the applicant has obtained the right to enter to conduct exploration activities identified;

(7) a narrative description of the following:

(A) the method of exploration, to include the depth of subsurface penetration and the estimated size of the surface disturbance;

(B) the number of exploration holes anticipated to be drilled during the permit term;

(C) the plugging and well construction methods proposed to conform to the requirements of §11.27 of this title (relating to Uranium Exploration Reclamation and Plugging Requirements);

(D) measures for disposing of the cuttings formed by the drilling activity;

(E) procedures for leveling any disturbance caused by the drilling activity to conform to the requirements of §11.27(a) of this title; and

(F) geology and hydrogeology information for the area in which the exploration activity is to occur as necessary to support the plan for borehole plugging and well construction required in subparagraphs (A) through (E) of this paragraph;

(8) any specific plans necessary for the protection of surface and ground-water resources in the exploration and adjacent areas; and

(9) a certification by the applicant attesting to the facts in the application.

§11.26. Uranium Exploration Permit Application Fees.

(a) An application fee shall accompany each application for a permit involving uranium exploration drilling. The application fee shall consist of:

(1) an amount equal to $0.10 per acre for each acre included within the proposed exploration area identified on a map as part of the application and;

(2) an amount equal to $1,500 for each unit of 50 exploration boreholes anticipated to be drilled during the twelve-month permit term.

(b) Permit amendments that propose additional exploration area and/or an increase in the number of boreholes drilled shall be accompanied by a permit amendment application fee.

(1) This permit amendment application fee shall be determined based on the increase in permit area acreage and the additional boreholes to be drilled, and shall be calculated using the per-acre and borehole rates indicated in the fee schedule under subsection (a) of this section.

(2) Each amendment shall be accompanied by updated information required under §11.25(5), (6) and (7) of this title (relating to Application for Uranium Exploration Activity).

(c) Permit renewals shall be accompanied by a permit renewal application fee calculated based on permitted acres and the number of anticipated boreholes to be drilled during the permit renewal term. The permit renewal application fee shall be calculated based on the per acre and borehole rates indicated in the fee schedule under subsection (a) of this section and shall be accompanied by updated information required under §11.25(4), (5), (6) and (7) of this title (relating to Application for Uranium Exploration Activity).

§11.27. Uranium Exploration Reclamation and Plugging Requirements.

(a) Surface reclamation will include segregating topsoil from the subsoil while digging a drilling fluid mud pit. Open mud pits shall be protected from livestock and from discharges resulting from rainfall and runoff. When drilling is complete, the mud pit shall be allowed to dry and then backfilled with native subsoil followed by topsoil. The disturbed area must be returned to approximate original contour and appropriately seeded to minimize erosion. Reclamation of the drill site shall occur as contemporaneously as practicable with the drilling activity. Trash and other debris brought to the drill site by the permittee will be disposed of in approved sanitary landfills.

(b) No exploration borehole shall be drilled within 150 horizontal feet of an existing water well without the written consent of the well owner.

(c) Each exploration borehole shall be plugged as soon as reasonably practical after drilling, unless an aquifer is encountered, in which case the exploration hole shall be plugged within 48 hours of drilling.

(d) Exploration boreholes shall be plugged with Type-1 cement from total depth to at least three feet below ground surface unless alternative plugging methods are approved. Plugs must be emplaced using downhole tubing. The remainder of the hole between the top of the plug and the ground surface shall be filled with non-toxic, non-radioactive cuttings or soil. To ensure that the proper plug depth is achieved, boreholes shall be allowed to settle and dry for several days and then rechecked for plug depth. If the plug depth is not at the required distance from the surface, additional cement or alternative plugging material, if approved, will be added to bring the plug to the required level. Each plugged borehole must be physically marked until inspected by the Commission using a section of poly rope, PVC pipe, or similar device that will mark the location of the borehole. The specific borehole location marking method shall be described in the permit application.

(e) Alternative plugging methods and materials may be utilized if they are demonstrated to the Commission's satisfaction that the alternatives will provide the same level of ground-water protection provided under subsection (d) of this section.

(f) Exploration boreholes that are cased for use as a monitor well or production well shall be cased within 48 hours after drilling and be reported to the Commission within 30 days of well completion. The well completion report will identify the well location on a map, provide Texas State Plane coordinates, hole depth, completion information and measures taken to mark and protect the well.

(g) The permittee shall provide prior notification to the Commission:

(1) adequate to allow scheduling of inspections when:

(A) actual drilling operations commence and stop; and

(B) if stoppage is greater than 30 days, when such activities recommence; and

(2) within 30 days following cessation of drilling or plugging during the permit term.

§11.28. Uranium Exploration Plugging Report.

Within 90 days after the expiration of an exploration permit, the permittee shall submit a report to the Commission setting forth the location of each exploration borehole drilled and each cased exploration well installed under the permit, together with a affidavit by the permittee attesting that the plugging and reclamation requirements for each have been satisfied. If exploration ceases before the end of the permit term, the plugging report shall be submitted within three months of cessation of exploration. All boreholes must be plugged or cased during the permit term. The report shall include a map that depicts the landowner tracts upon which exploration was conducted and the locations of all boreholes drilled during the permit year. The report shall also include a listing of all boreholes drilled, survey-grade Texas State Plane coordinates of each borehole, plugging method, drilling depth, and drilling and plugging dates.

§11.29. Uranium Exploration Permit Renewal.

(a) Any valid exploration permit issued pursuant to these rules shall carry with it the right of successive renewal on expiration of the permit term. The permit holder must apply by filing a renewal application with the Commission 60 days prior to the expiration of the permit term. The renewal application shall describe any amendments proposed to the exploration activity and be accompanied by a renewal application fee determined in accordance with §11.26(c) of this title (relating to Uranium Exploration Permit Application Fees). The renewal shall be issued on the written finding by the Commission that:

(1) the terms and conditions of the existing permit are being met; and

(2) the permittee has provided any additional or revised information required by the Commission.

(b) A renewal application must be submitted if the requirements of §11.24(d) of this title (relating to Uranium Exploration Permit Required) have not been met.

§11.30. Uranium Exploration Permit Amendment.

A permit may be amended by filing a permit amendment application with the Commission 30 days prior to the proposed amendment implementation date. The permittee shall describe in the amendment application any changes proposed to the exploration activity and the application shall be accompanied by an amendment application fee, if applicable, in accordance with §11.26(b) of this title (relating to Uranium Exploration Permit Application Fees).

§11.31. Uranium Exploration Permit Transfer.

A request for permit transfer may be made by filing a permit transfer application with the Commission. The transfer application shall identity the new prospective permittee in accordance with §11.25(2) and (3) of this title (relating to Application for Uranium Exploration Activity). The transfer application must also be accompanied by a plugging report in accordance with §11.32 of this title (relating to Uranium Exploration Permit Application Notification by the Commission) demonstrating that the current permit holder has completed all plugging and reclamation requirements. Any changes proposed to the permit other than the permittee must be made by application for a new permit.

§11.32. Uranium Exploration Permit Application Notification by the Commission.

The Commission shall provide written notice of receipt of an exploration permit application and the issuance of an exploration permit or permit renewal to the following:

(1) each groundwater conservation district in the area in which the exploration activity will occur;

(2) the mayor and health authority of each municipality in the area in which the exploration activity will occur;

(3) the county judge and health authority of each county in the area in which the exploration activity will occur; and

(4) each member of the Texas legislature who represents the area in which the exploration activity will occur.

§11.33. Information Provided to Groundwater Conservation Districts.

Information or data provided by a permittee to a groundwater conservation district in accordance with the requirements of Texas Natural Resources Code, §131.354(d) and §131.357(a) and (c) shall also be provided to the Commission.

§11.41. Uranium Surface Mining Permits.

(a) Term. Surface mining permits for uranium shall be for a term not to exceed 10 years.

(b) Permit Application.

(1) A permit application may cover one or more surface mining operations which may or may not be contiguous.

(2) The application for noncontiguous operations may contain a consolidated reclamation plan covering each of the separate operations unless the nature of the operations varies to such an extent to require the delineation of distinctly separate reclamation plans.

(3) Three copies of the permit application shall be submitted to the Commission.

(c) Elements of Permit Application.

(1) The permit application shall consist of the following elements.

(A) An initial application fee of $400 shall be submitted and made payable to the Railroad Commission of Texas.

(B) If the applicant wishes, the applicant may submit an estimate made by a qualified independent person of the cost of reclamation of the lands covered by the permit application and this estimate shall be used in determining the amount of bond required of the applicant, and registration as a professional engineer shall be prima facie evidence of qualification for making such estimate.

(C) Since the applicant is solely responsible for providing legally adequate notification of the application for a surface mining permit in compliance with the requirements of §11.3 of this title (relating to Permit Processing), and affidavit of publication shall be provided to the Commission within 15 days following the last day of publication.

(D) The applicant shall include a plan to reclaim all land disturbed by the surface mining operation pursuant to the requirements of §§11.81 - 11.83 of this title (relating to Reclamation Plan; Reclamation Standards; and Alternative Reclamation Methods).

(E) The applicant shall provide all other information required in the permit application form provided by the Commission.

(d) Surface Mining Permit Application Approval.

(1) After approval but prior to issuance of the surface mining permit, the applicant shall pay $10 per acre of the permit area, in addition to the initial $400 application fee; however, this fee may be paid in annual installments apportioned over the term of the permit on the basis of the acreage to be disturbed during 12-month periods.

(2) When notifying the applicant of approval of a permit application in accordance with the Administrative Procedure Act and §11.3 of this title (relating to Permit Processing), the Commission shall inform the applicant of the amount of approved application fee and the bond required for each surface mining operation covered by the permit.

(e) Surface Mining Permit Issuance.

(1) The applicant shall have the right to proceed with activities approved in the application:

(A) immediately upon submitting the certificates, bond (or other substitute collateral), approved application fee required in §11.42 of this title (relating to Bonding, Insurance, and Payment of Fees); and

(B) the Commission has issued a written permit for such activities.

(2) The Commission will issue a written permit within 30 days after the certificates, bonds (or other substitute collateral), and approved application fee required in §11.42 of this title (relating to Bonding, Insurance, and Payment of Fees), have been received by the Commission.

§11.42. Bonding, Insurance, and Payment of Fees.

After receipt of notification of approval as provided in §11.41(d) of this title (relating to Uranium Surface Mining Permits), the applicant shall submit to the Commission within 180 days following notification of approval:

(1) a certificate of insurance on a form provided by the Commission and executed by an insurance company authorized to conduct business in the State of Texas covering all surface mining operations authorized by said permit showing protection of the following types in the amounts indicated:

(A) bodily injury, $500,000 per person, $1.5 million per accident;

(B) property damage, $1 million per accident; which includes but is not limited to damage resulting from the use of explosives;

(2) cash or check in the amount set forth in the notice of approval to cover the approved application fee or the first annual installment thereon; and

(3) unless the Commission accepts the bond of the operator itself, as provided in §11.93 of this title (relating to Performance Bonds), a performance bond (or other substitute collateral) covering the surface mining operation or the first increment thereof, on a form to be provided by the Commission (payable to the Railroad Commission of Texas) and conditioned on full and faithful performance of all requirements of the Act and the permit for which the application was filed; provided, however, that if the bond (or other substitute collateral) is provided in increments, it shall cover that area of land within the permit area on which the first increment of surface mining and reclamation operations will be conducted. The applicant shall give the Commission 30 days notice before undertaking each additional increment of surface mining operations and shall include with such notice an appropriate performance bond for such increment.

§11.43. Surface Mining Permit Renewal.

(a) Any valid surface mining permit issued pursuant to these rules shall carry with it the right of successive renewal on expiration with respect to areas within the boundaries of the existing permit. The holder of such permit may apply for renewal not later than 90 days prior to the expiration of the permit and such renewal shall be issued on the written finding by the Commission that:

(1) the terms and conditions of the existing permit are being satisfactorily met;

(2) the performance bond or other substitute collateral required under the terms of these rules continue in full force and effect and unimpaired for the requested renewal;

(3) the operator has provided any additional or revised information required by the Commission; and

(4) notice under §11.31 of this title (relating to Public Notice) has been provided with respect to the application for renewal.

(b) If an application for renewal of a valid permit includes a proposal to extend the mining operation beyond the boundaries authorized in the existing permit, the portion of the application for renewal of a valid permit which addresses any new land areas shall be subject to the full standards, including application fees, applicable to new applications under these rules.

(c) Any surface mining permit renewal shall be for a term not to exceed the period of the original permit established by these rules.

(d) In the event a renewal application which satisfies the requirements of this section has not been acted upon by the Commission on the date of expiration of the prior permit, the operator may continue the surface mining operations pursuant to the conditions of the prior permit until such time as the Commission acts upon the renewal application.

§11.44. Surface Mining Permit Transfer.

(a) No transfer, assignment, or sale of the rights granted under any permit issued pursuant to these rules shall be made without the written approval of the Commission. Any person desiring to succeed to the interests of a permittee hereunder must file an application on a form prescribed by the Commission setting out the following information:

(1) the ownership and other mining activities of the applicant;

(2) proof that the public liability insurance requirement of §11.42(1) of this title (relating to Bonding, Insurance, and Payment of Fees) will be fulfilled;

(3) proof that the performance bond or other substitute collateral required in §11.42(3) of this title (relating to Bonding, Insurance, and Payment of Fees) will be furnished;

(4) a statement that the applicant will faithfully carry out all of the requirements of the reclamation plan approved in the permit; and

(5) an affidavit of publication of notice from the newspaper of the greatest general circulation in the locality of the land affected.

(b) The application for transfer shall be approved, subsequent to notice and opportunity for public hearing, if any is required under §11.3 of this title (relating to Permit Processing), on the written finding by the Commission that the following requirements have been met:

(1) the terms and conditions of the existing permit are being satisfactorily met;

(2) the performance bond or substitute collateral required under the terms of these sections will continue in full force and effect;

(3) the transferee has provided any additional or revised information required by the Commission; and

(4) notice under §11.3(a) of this title (relating to Permit Processing) has been provided with respect to the application for transfer;

(c) The application for transfer shall be denied if the transferee has had any permit issued hereunder revoked, or any bond posted to comply with the rules forfeited, and if the conditions causing the bond to be forfeited have not been corrected to the satisfaction of the Commission.

§11.45. Surface Mining Permit Approval or Denial.

(a) Permit Approval. The surface mining permit shall be granted if it is established that the application complies with the requirements of this chapter and all applicable federal and state laws. The Commission may approve a surface mining permit conditioned upon the approval of all other state permits or licenses which may be required.

(b) Permit Denial. The Commission shall deny a permit if:

(1) the Commission finds that the reclamation as required by these sections cannot be accomplished by means of the proposed reclamation plan;

(2) any part of the proposed operation lies within an area designated as unsuitable for surface mining as designated by Subchapter C of this chapter (relating to Designation of Lands Unsuitable for Surface Uranium Mining); provided, however, the application may be amended to exclude such designated areas;

(3) the Commission is advised by the Texas Commission on Environmental Quality that the proposed mining operation will cause pollution of any water of the state, or will cause pollution of the ambient air of the state, in violation of the laws of this state;

(4) the applicant has had any other permit issued under the Act revoked, or any bond posted to comply with these sections forfeited, and the conditions causing the permit to be revoked or the bond to be forfeited have not been corrected to the satisfaction of the Commission;

(5) the Commission determines that the proposed operation will endanger the health and safety of the public;

(6) the Commission determines that the proposed operation will adversely affect any public highway or road; provided that, a surface mining operation will be presumed not to adversely affect a public highway or road if the governmental authority responsible for the location and/or maintenance of the highway or road has no objection to the surface mining operation; or

(7) the operator is unable to produce the bonds or otherwise meet the requirements of §11.93 of this title (relating to Performance Bonds).

§11.46. Permit Changes.

(a) Revision on Motion or with Consent. The holder of a permit on the permit holder's own initiative or upon request of the Commission may file an application to revise the permit in any particular.

(1) A document shall be prepared setting forth the revisions desired. The holder of a permit shall use the form of an application for a permit and indicate thereon the changes requested. The manner of preparation of the application for a revision of a permit and the information submitted shall conform to the requirements of §11.41 of this title (relating to Uranium Surface Mining Permits).

(2) Within five days after receiving the application for revision, the Commission shall determine whether the application for revision proposes a substantial change in the intended use of the land or significant alteration in the reclamation plan.

(3) Any application for revision of a permit which proposes a substantial change in the intended future use of the land or significant alteration in the reclamation plan shall comply with the notice and hearing requirements set out in §11.3 of this title (relating to Permit Processing) and shall be approved or denied by the Commission within 60 days of the date the Commission determines whether the application is of significance sufficient to warrant a public hearing.

(4) Any extensions to the area covered by a permit, other than incidental boundary revisions, shall be made by application for another permit.

(5) Determinations by the Commission of a revision of a permit shall be made in conformity with the Administrative Procedure Act and §11.3(h) of this title (relating to Permit Processing).

(b) Corrections. In any of the following situations, the Commission may make a correction to a permit or order by reissuing the permit or order without the necessity of observing the formal revision procedure described in subsection (a) of this section:

(1) to correct a clerical or typographical error;

(2) to describe more accurately the location of the authorized surface mining operation;

(3) to describe more accurately the nature, type, and method of the surface mining operation; or

(4) to describe more accurately any provision in a permit or order, but without changing the substance of any such provision.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on October 9, 2007.

TRD-200704805
Mary Ross McDonald
Managing Director
Railroad Commission of Texas
Earliest possible date of adoption: November 25, 2007
For further information, please call: (512) 475-1295

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SUBCHAPTER C. DESIGNATION OF LANDS UNSUITABLE FOR SURFACE MINING

16 TAC §11.71, §11.72

The Commission proposes the new rules under Texas Natural Resources Code, §131.021, which authorizes the Commission to promulgate rules pertaining to surface uranium mining and exploration operations; Texas Natural Resources Code, §131.355, which authorizes the Commission to impose fees and mandates the fee collection authorized in House Bill 3837, 80th Legislature (2007) and House Bill 1, Article VI, Railroad Commission Rider 13, 80th Legislature (2007), which requires the Commission to assess fees sufficient to generate during the 2008-2009 Biennium revenue to cover the contingent general revenue appropriation.

Statutory authority: Texas Natural Resources Code, §131.001, *et seq.*, as amended by House Bill 3837, 80th Legislature (2007).

Cross-reference to statute: Texas Natural Resources Code, §131.001, *et seq.*, as amended by House Bill 3837, 80th Legislature (2007).

Texas Natural Resources Code, §131.001, *et seq.*, as amended by House Bill 3837, 80th Legislature (2007) is affected by the proposed new rules.

Issued in Austin, Texas on October 9, 2007.

§11.71. Petition Procedure and Determination.

(a) Petition Contents. Any person wishing to have an area designated as unsuitable for surface mining operations or to have such designation terminated shall file four copies of a petition with the Commission, with such petition containing the following:

(1) a map, which shall be a topographical map of a scale no smaller than one inch equal to 500 feet showing the location of the area on which the petition is filed;

(2) a statement disclosing all property or other interests in the land covered by the petition or in any other lands within five miles which are owned or held, directly or indirectly, by the petitioner or any member of the petitioner's family;

(3) a listing of local governmental bodies, planning agencies, sewage and water treatment authorities, or water companies having jurisdiction over or in the locality of the proposed designation and people residing within the boundaries of the proposed designation;

(4) if the petition is for the purpose of designating an area unsuitable for surface mining, a statement setting forth the types of surface mining that will cause the adverse impact and how the surface mining methods will cause an adverse impact;

(5) a statement setting forth, in detail, all facts on which the petition is based;

(6) documentary or other evidence in support of the facts alleged in the petition; and

(7) if the petition is for the purpose of terminating an unsuitable designation, a detailed statement setting forth:

(A) the potential ore or other resources of the area;

(B) the demand for such resources; and

(C) the impact of a designation of the land unsuitable for surface mining on the environment, the economy, and the supply of the minerals identified in this section.

(b) Determination of Petition Validity. Within 30 days following the date of receipt by the Commission of the petition to declare lands unsuitable for surface mining or to modify or terminate the designation, the Commission shall determine the completeness and validity of the petition and notify the petitioner of the results of such determination.

(1) If the petition is found to be complete and valid, it shall be kept on file by the Commission and made available for public inspection.

(2) If the petition is rejected, the notice of rejection shall set forth each of the reasons for rejection.

(3) The determination to accept or reject the petition shall be published in the *Texas Register*.

(c) Hearing on Petition. Upon application for a surface mining permit covering an area for which a complete and valid petition to declare lands unsuitable for surface mining has been filed, the Commission shall hold a hearing to consider the petition, in accordance with the notice requirements of §11.3 of this title (relating to Permit Processing), and in addition to such notice shall give notice to those persons and entities required to be submitted by the petitioner in subsection (a) of this section.

(d) Petitions Not Accepted. No petition shall be accepted which covers lands for which notice of the filing of an application for a surface mining permit has been published pursuant to §11.3 of this title (relating to Permit Processing).

(e) Notice of Petition Determination. Following a determination by the Commission that lands are unsuitable for surface mining operations, such determination along with a general description of the location of the land(s) shall be published in the *Texas Register*, and such publication shall also state that a more precise delineation of the land's location may be found in the Austin office of the Commission.

§11.72. Elements of Unsuitability.

(a) When an application is made to conduct a surface mining operation, the Commission shall immediately cause the areas proposed to be included within the proposed permit to be surveyed prior to the issuance of a permit. Following the survey and/or hearing where one is warranted, the area may be designated unsuitable for all or certain types of surface mining if:

(1) the Commission determines that reclamation pursuant to the requirements of the Act is not feasible;

(2) such operations will result in significant damage to important areas of historic, cultural, or archaeological value or to important natural systems;

(3) such operations will affect renewable resource lands resulting in a substantial loss or reduction of long-range productivity of water supply or food or fiber products, such lands to include aquifers and aquifer recharge areas;

(4) such operations are located in areas subject to frequent flooding or areas of unstable geology and may reasonably be expected to endanger life and property;

(5) such operations will adversely affect any national park, national monument, national historic landmark, property listed on the national register of historic places, national forest, national wilderness area, national wildlife refuge, national wild and scenic area, state park, state wildlife refuge, state forest, recorded Texas historic landmark, state historic site, state archaeological landmark or city or county park (a surface mining operation will be presumed to not adversely affect any of the areas listed in this paragraph if the agency or governmental body responsible for such area has no objection to the proposed surface mining operation);

(6) where such operations would endanger any public road, public building, cemetery, school, church, or similar structure or existing dwelling outside the permit area (a surface mining operation will be presumed to not adversely affect any of the preceding if the person or governmental body which owns or is responsible for the administration or maintenance of the above has no objection to the surface mining operation); or

(7) areas subject to frequent flooding or areas located within recharge zones of aquifers which provide drinking water to the public may be unsuitable for conventional surface mining operations and any operations proposed for those areas will be critically evaluated by the Commission.

(b) Notice of Existing Unsuitable Designation.

(1) Within 10 days following receipt of an application for a surface mining permit covering an area on which a designation of unsuitability for surface mining has been made by the Commission, the Commission shall provide to the applicant a copy of such determination.

(2) The applicant may thereafter amend the application to eliminate any land covered by the designation.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on October 9, 2007.

TRD-200704806
Mary Ross McDonald
Managing Director
Railroad Commission of Texas
Earliest possible date of adoption: November 25, 2007
For further information, please call: (512) 475-1295

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SUBCHAPTER D. SURFACE MINING RECLAMATION, MINE CLOSING, AND RELEASE

16 TAC §§11.81 - 11.86

The Commission proposes the new rules under Texas Natural Resources Code, §131.021, which authorizes the Commission to promulgate rules pertaining to surface uranium mining and exploration operations; Texas Natural Resources Code, §131.355, which authorizes the Commission to impose fees and mandates the fee collection authorized in House Bill 3837, 80th Legislature (2007) and House Bill 1, Article VI, Railroad Commission Rider 13, 80th Legislature (2007), which requires the Commission to assess fees sufficient to generate during the 2008-2009 Biennium revenue to cover the contingent general revenue appropriation.

Statutory authority: Texas Natural Resources Code, §131.001, *et seq*., as amended by House Bill 3837, 80th Legislature (2007).

Cross-reference to statute: Texas Natural Resources Code, §131.001, *et seq*., as amended by House Bill 3837, 80th Legislature (2007).

Texas Natural Resources Code, §131.001, *et seq*., as amended by House Bill 3837, 80th Legislature (2007) is affected by the proposed new rules.

Issued in Austin, Texas on October 9, 2007.

§11.81. Reclamation Plan.

A reclamation plan, which is an essential element of the surface mining permit application, shall be developed in a manner consistent with local, physical, environmental, and climatological conditions and current mining and reclamation technologies and shall include where applicable the following information:

(1) the identification of the entire area to be mined and affected over the estimated life of the mining operation;

(2) the condition of the land to be covered by the permit prior to any mining, including:

(A) the uses existing at the time of the application, and if the land has a history of previous mining, the uses, if reasonably ascertainable, which immediately preceded any mining; and

(B) the capability of the land prior to any mining to support a variety of uses, giving consideration to soil and foundation characteristics, topography, and vegetative cover;

(3) the capacity of the land to support its anticipated use following reclamation, including a discussion of the capacity of the reclaimed land to support alternative uses:

(A) included in this discussion shall be the uses to which similar land in the vicinity, which is not being mined is being put; and

(B) uses, if any, to which similar land which has been similarly mined is being utilized;

(4) a description of how the proposed postmining land condition is to be achieved and the necessary support activities that may be needed to achieve the condition, including an estimate of the cost per acre of the reclamation;

(5) the steps taken to comply with applicable air and water quality and water rights laws and regulations and any applicable health and safety standards, including copies of any pertinent permit applications; and

(6) a general timetable that the operator estimates will be necessary for accomplishing the major events contained in the reclamation plan.

§11.82. Reclamation Standards.

The operator of all surface mining and reclamation operations not otherwise exempted or excluded shall, at a minimum:

(1) conduct surface mining operations in a manner consistent with prudent mining practice, so as to maximize the utilization and conservation of the resource being recovered so that reaffecting the land in the future through surface mining can be minimized;

(2) restore the land affected to the same or a substantially beneficial condition considering the present and past uses of the land, so long as condition does not present any actual or probable hazard to public health or safety or pose an actual or probable threat of water diminution or pollution, and the operator's declared anticipated land use following reclamation is not deemed to be impractical or unreasonable, to involve unreasonable delay in implementation, or to be violative of federal, state, or local law; provided that a variety of postmining land conditions which differ from the land condition immediately preceding the surface mining operation, including but not limited to stock ponds, fishing or recreational lakes, school or park sites, industrial, commercial, or residential sites, or open space uses, may be approved by the Commission if the proposed condition is determined to be substantially beneficial and complies with the provisions of §§11.81 - 11.83 of this title (relating to Reclamation Plan; Reclamation Standards; and Alternative Reclamation Methods);

(3) reduce all highwalls, spoil piles, and banks to a slope sufficient to control erosion effectively and sufficient to sustain vegetation, where required, consistent with the anticipated subsequent use of the affected land;

(4) stabilize and protect all surface areas affected by the mining and reclamation operation effectively to control erosion and attendant air and water pollution;

(5) remove the topsoil, if any, from the land in a separate layer, replace it on the backfill area; or, if not utilized immediately, segregate it in a separate pile from other spoil and when the topsoil is not replaced on a backfill area within a time short enough to avoid deterioration of the topsoil, maintain a successful cover by quick growing plants or other means so that the topsoil is preserved from wind and water erosion, remains free of any contamination by toxic material, and is in a usable condition for sustaining vegetation when restored during reclamation; except if topsoil is of insufficient quantity or of poor quality for sustaining vegetation and if other strata can be shown to be as suitable for vegetation requirements, then the operator shall remove, segregate, and preserve in a like manner such other strata which is best able to support vegetation; provided that the requirements of this para-

graph shall not apply if a mixing of strata can be shown to be equally suitable for revegetation requirements;

(6) replace the topsoil or the best available subsoil, if any, on top of the land to be reclaimed;

(7) fill any auger holes with an impervious material in order to prevent drainage;

(8) minimize the disturbances to the prevailing hydrologic balance at the mine site and in associated offsite areas and to the quality and quantity of water in surface and ground water systems both during and after surface mining operations and during reclamation by:

(A) avoiding mine drainage by such measures as, but not limited to:

(i) preventing or removing water from contact with toxic-producing deposits;

(ii) treating drainage to reduce toxic content; or

(iii) casing, sealing, or otherwise managing boreholes, shafts, and wells to keep toxic drainage from entering ground and surface waters;

(B) conducting surface mining operations so as to prevent unreasonable additional contributions of suspended solids to streamflow or runoff outside the permit area above natural levels under seasonal flow conditions; and

(C) consistent with good water conservation practices, removing such temporary or large siltation structures from drainways after disturbed areas are revegetated and stabilized;

(9) stabilize any waste piles;

(10) refrain from surface mining in proximity to active and abandoned underground mines where such mining would cause breakthroughs or would endanger the health or safety of miners;

(11) with respect to the use of impoundments for the disposal of mine wastes, processing wastes, or other liquid or solid wastes, incorporate current engineering practices for the design and construction of water retention facilities which, at a minimum, shall be compatible with the requirements of Water Code §12.052, and applicable federal laws, ensure that leachate will not pollute surface or ground water, and locate impoundments so as not to endanger public health and safety should failure occur;

(12) ensure that all debris, toxic materials, or materials constituting a fire hazard are treated or disposed of in a manner designed to prevent contamination of ground or surface waters or combustion;

(13) ensure that any explosives are used only in accordance with existing state and federal law and regulations promulgated by the Commission;

(14) ensure that all reclamation efforts proceed as contemporaneously as practicable with the surface mining operation;

(15) ensure that construction, maintenance, and postmining conditions of access roads into and across the site of operations will minimize erosion and siltation, pollution of air and water, damage to fish or wildlife or their habitat, or public or private property; provided that the Commission may permit the retention after mining of certain access roads if compatible with the approved reclamation plan;

(16) refrain from the construction of roads or other access ways up a stream bed or drainage channel or in proximity to such channel where such construction would seriously alter the normal flow of water;

(17) establish on all affected lands, where required in the approved reclamation plan, a diverse vegetative cover native to the affected land where vegetation existed prior to mining and capable of self-regeneration and plant succession equal in extent of cover to the natural vegetation of the area; except that introduced species may be used in the revegetation process where desirable or necessary to achieve the approved reclamation plan;

(18) assume responsibility for successful revegetation for a period of four years beyond the first year in which the vegetation has been successfully established as evidenced by the land being used as anticipated in the reclamation plan;

(19) with respect to permanent impoundments of water as a part of the approved reclamation plan, ensure that:

(A) the size of the impoundment and the availability of water are adequate for its intended purpose;

(B) the impoundment dam construction will meet the requirements of Water Code §12.052, and applicable federal laws;

(C) the quality of impounded water will be suitable on a permanent basis for its intended use and the discharges from the impoundment will not degrade the water quality in the receiving stream;

(D) final grading will provide adequate safety and access for anticipated water users; and

(E) such water impoundments will not result in the diminution of the quality or quantity of water utilized by adjacent or surrounding landowners for agricultural, industrial, recreational, or domestic uses;

(20) unless the operator has made appropriate arrangements with the persons affected (as used in this paragraph only, "persons affected" means those persons or government agencies which own or reside on or are responsible for the administration of the places listed in this paragraph), either not create a cut:

(A) within 100 feet of any oil and gas well unless such well has been properly plugged; or

(B) within 150 feet of the outside line of the right of way of any public highway or from the boundary of any national park, national monument, national historic landmark, property listed on the national register of historic places, national forest, national wilderness area, national wildlife refuge, national wildlife and scenic areas, state park, state wildlife refuge, state forest, recorded Texas landmark, state historic site, state archaeological landmark, city or county park, public road, public building, cemetery, school, church, or existing dwelling outside the permit area;

(21) provide, when the surface mining operation is permitted to be located within 150 feet of the outside line of the right of way of any public highway or from the boundary of any national park, national monument, national historic landmark, property listed on the national register of historic places, national forest, national wilderness area, national wildlife refuge, national wildlife and scenic areas, state park, state wildlife refuge, state forest, recorded Texas historic landmark, state historic site, state archaeological landmark, city or county park, public road, public building, cemetery, school, church, or existing dwelling outside the permit area a screen of natural vegetation between the surface mining operation and the areas described in this paragraph;

(22) provide, prior to creating a cut for a surface mining operation, a drainage system adequate to prevent storm water runoff from coming into contact with the surface mining operation in quantities which would cause significant degradation of area surface and ground waters;

(23) provide that runoff water from areas disturbed by mining activities be impounded, drained, diverted, or treated prior to discharge, to reduce soil erosion, damage to unmined lands, or the pollution of streams and other waters. These objectives shall be accomplished as follows:

(A) runoff from any uranium pad and all water pumped from an ore zone shall be retained in a holding pond located in the mine site area and may not be discharged unless such discharge will not adversely affect the receiving waters;

(B) after completion of ore removal, rainfall runoff from the overburden shall be drained into the cut or otherwise controlled until erosion control is established. Techniques that the operator may utilize to accomplish the requirements of this paragraph include, but are not limited to:

(i) grading of the overburden;

(ii) reliance upon the existence of natural drainage in the area; and

(iii) the construction of ditches, dams, or berms; and

(C) if a permanent water impoundment results from surface mining operations, its banks from the top down to 10 feet below the mean water level shall be established as a slope of not greater than one foot vertical to four feet horizontal;

(24) provide that toxic-forming materials present in spoil ridges or in the exposed face of a mined ore deposit be covered with nontoxic materials. Final cuts or other depressed areas no longer in use in mining operations which accumulate toxic material are prohibited;

(25) unless otherwise specified by the Commission, planting shall be done when the season, local weather conditions, and soil conditions are suitable for seed germination and plant survival;

(26) revegetation shall be considered successful as required under §131.102(b)(18) of the Act when it is:

(A) capable of self-regeneration and plant succession; and

(B) generally at least equal in extent of cover to the natural vegetation of the area;

(27) provide that slopes of overburden piles be shaped to minimize runoff and to provide a surface to be seeded;

(28) in implementing the standards enumerated in this section, the following guidelines will apply:

(A) the applicant's declared anticipated land use following reclamation will be considered unacceptable to the Commission unless such land following reclamation will be returned to the same condition as it enjoyed prior to mining or to a condition determined by the Commission to be substantially beneficial. In determining whether the anticipated postmining land use is substantially beneficial, the Commission may consider, although not exclusively, practicable uses to which the land may be put; the past and present market value of the land; its productivity, past and present; its support of habitat for wildlife, past and present; and its provision for recreational utility, past and present; and

(B) except where the land will be inundated by a permanent water impoundment or unless the value and/or usefulness of the land will be reasonably comparable to or enhanced by an alternative procedure, the operator will restore the surface of the land to its approximate original contour and where necessary compact its overburden and topsoil to prevent erosion;

(29) with respect to pipelines transmitting crude oil, liquid petroleum, natural gas, toxic, or flammable substances:

(A) identify and describe pipelines located in the permit area and within 100 feet thereof in the application for a surface mining permit;

(B) visibly mark the location of pipelines at 200-foot intervals throughout the permit area;

(C) ensure a minimum of six feet of compacted material between the pipeline and any haul road or access road within the permit area which crosses over it;

(D) not create a cut within 100 feet or one times the depth of the cut (whichever is greater) of any pipeline;

(E) conduct blasting operations in accordance with state and federal laws; but, in no case shall blasting be conducted within 200 feet of a pipeline;

(F) comply with rules and regulations pursuant to Texas Natural Resources Code, Chapter 117; Texas Utilities Code, Chapter 121; Commission pipeline safety rules in 16 Texas Administrative Code, Chapters 8 and 18; and 49 CFR 191, 192, and 199; and

(G) at the discretion of the Commission, variances to subparagraphs (B), (C), (D), and (E) of this paragraph may be granted by the Commission. Variances to subparagraphs (C), (D), and (E) of this paragraph will be granted if in the opinion of the Commission the structural integrity of the pipeline will be maintained and if agreed to by the owner of the pipeline.

§11.83. Alternative Reclamation Methods.

A method of reclamation other than that provided in §11.81 of this title (relating to Reclamation Plan) and §11.82 of this title (relating to Reclamation Standards) may be approved by the Commission after public hearing, if the Commission determines that any method of reclamation required by this section is not practicable and that such alternative method will provide for the affected land to be restored to a substantially beneficial condition.

§11.84. Amendments.

The operator may revise or amend the approved reclamation plan at any time in accordance with the requirements of §11.46(a) of this title (relating to Permit Changes).

§11.85. Surface Mine Closing.

Any incremental part of a mining operation for which a separate bond has been submitted will be considered as closed for the purposes of these sections at such time as the operator demonstrates the following to the Commission:

(1) that all the requirements of §§11.81 - 11.83 of this title (relating to Reclamation Plan; Reclamation Standards; and Alternative Reclamation Methods) have been met; and

(2) that vegetative cover, where required, has sustained itself for a period of four years.

§§11.86 Release.

Upon the fulfillment of the requirements set forth in §11.85 of this title (relating to Surface Mine Closing), the operator will be released from further responsibility for activities and reports required by these sections. The operator will be notified in writing by the Commission upon such release, which notification shall be a prerequisite to final release of bond under §11.94 of this title (relating to Release or Reduction of Bonds).

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on October 9, 2007.

TRD-200704807
Mary Ross McDonald
Managing Director
Railroad Commission of Texas
Earliest possible date of adoption: November 25, 2007
For further information, please call: (512) 475-1295

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SUBCHAPTER E. REPORTING, RECORD MAINTENANCE, AND PERFORMANCE BONDS

16 TAC §§11.91 - 11.94

The Commission proposes the new rules under Texas Natural Resources Code, §131.021, which authorizes the Commission to promulgate rules pertaining to surface uranium mining and exploration operations; Texas Natural Resources Code, §131.355, which authorizes the Commission to impose fees and mandates the fee collection authorized in House Bill 3837, 80th Legislature (2007) and House Bill 1, Article VI, Railroad Commission Rider 13, 80th Legislature (2007), which requires the Commission to assess fees sufficient to generate during the 2008-2009 Biennium revenue to cover the contingent general revenue appropriation.

Statutory authority: Texas Natural Resources Code, §131.001, *et seq*., as amended by House Bill 3837, 80th Legislature (2007).

Cross-reference to statute: Texas Natural Resources Code, §131.001, *et seq*., as amended by House Bill 3837, 80th Legislature (2007).

Texas Natural Resources Code, §131.001, *et seq*., as amended by House Bill 3837, 80th Legislature (2007) is affected by the proposed new rules.

Issued in Austin, Texas on October 9, 2007.

§11.91. Annual Report.

(a) Annual report requirement. Unless this requirement is modified or waived by the Commission, within 90 days after the conclusion of each calendar year, each operator conducting surface mining operations under one or more approved surface mining permits shall file an operations and progress report with the Commission on a form prescribed and furnished by the Commission.

(b) Contents of Annual Report. The report shall include the following elements:

(1) identification of the operator of the mine or mines covered by the report and the permit number(s) under which the surface mining activities were carried out;

(2) a summary of the amount of acreage disturbed, the amount of coal and/or uranium underlying such acreage and the amount of coal and/or uranium actually recovered from such acreage under each mining permit during the last 12-month period;

(3) a description of the amount and type of reclamation carried out in the last 12-month period for each mine covered by a permit;

(4) an estimate of the acreage and location of the land which will be affected in the ensuing 12-month period; and

(5) a map or maps, which shall be no smaller than a topographical map on a scale of one inch equal to 500 feet showing the location of acreage disturbed by mining during the past year, the location of reclamation carried out during the past year, and the location of acreage which will be affected by mining operations in the ensuing year.

(c) Release from Reporting Requirement. Surface mining operations conducted at any individual mine shall be reported in the annual report until such time as the mine is closed pursuant to the provisions of §§11.81 - 11.82 of this title (relating to Surface Mine Closing, and Release).

§11.92. Maintenance of Records.

The permit holder shall maintain records which shall be available in the Commission at all reasonable times showing, on a monthly basis:

(1) the number and location of mined acres;

(2) the number and location of acres under reclamation;

(3) the number and location of acres upon which reclamation has been completed; and

(4) the results or readings, taken on a monthly basis, from any monitoring equipment installed pursuant to orders of the Commission or any other state agency.

§11.93. Performance Bonds.

(a) Duration of Liability. Liability under the bond shall be for the duration of surface mining and reclamation operations and for a period coincident with the operator's responsibility pursuant to §§11.81 - 11.82 of this title (relating to Surface Mine Closing, and Release).

(b) Amount of Bond.

(1) The amount of the bond required for each bonded area shall depend on the reclamation requirements of the approved permit and shall be determined by the Commission on the basis of two estimates, one of which may be submitted by the permit applicant and the other prepared by the Commission provided that only the Commission's estimate need be submitted if applicant waives the right to submit an estimate.

(2) The amount of the bond shall be determined by the Commission and shall be sufficient to assure the completion of the reclamation plan if the work had to be performed by a third party in the event of forfeiture.

(c) Personal Bond.

(1) The Commission may accept the bond of the operator itself, without separate surety, when the operator demonstrates to the satisfaction of the Commission the existence of a suitable agent to receive service of process and history of financial solvency and continuous operation sufficient to self-insure or bond such amount.

(2) The Commission will be satisfied of the applicant's financial solvency and may accept the applicant's bond without separate surety if at the time of the consideration of the application and during each of the five years prior to the application, the applicant has owned net assets in excess of liabilities, as those terms are defined by generally accepted accounting principles, located in Texas and subject to process, in an amount at least twice the amount of the bond furnished, or in the opinion of the Commission, commensurate criteria.

(d) Form of Bond or Collateral.

(1) The bond shall be executed by the operator and a corporate surety licensed to do business in the State of Texas, except that the operator may elect to deposit cash or negotiable securities acceptable to the Commission, or an assignment of a savings account in a Texas bank on an assignment form prescribed by the Commission.

(2) The cash deposit or market value of such substitute collateral shall be equal to or greater than the amount of the bond required for the bonded area.

(3) Cash or other substitute collateral shall be deposited on the same terms as the terms on which surety bonds may be deposited.

(e) Changes in Coverage.

(1) The amount of the bond or deposit required and the terms of acceptance of the applicant's bond or substitute collateral may be increased or decreased from time to time to reflect changes in the cost of future reclamation of land mined or to be mined.

(2) The amount of the bond or substitute collateral may be reduced only in accordance with the provisions of §11.94 of this title (relating to Release or Reduction of Bonds) and such bond or deposit shall be increased or decreased when actual acreage affected by mining is ascertained.

§11.94. Release or Reduction of Bonds.

(a) At any time an operator may file an application with the Commission for the release of all or part of the performance bond or deposit. Such application shall be on a form prescribed by the Commission and shall contain the following:

(1) the type and approximate date of reclamation work performed;

(2) a description of the results achieved as they relate to the operator's reclamation plan;

(3) a copy of the notice published in accordance with §11.3 of this title (relating to Permit Processing) containing:

(A) the name of the operator;

(B) the permit number and the date approved;

(C) identification of the location and boundaries of the land affected;

(D) the amount of the bond filed and the portion sought to be released; and

(E) where the bond release application has been placed for public inspection.

(b) Within 45 days following receipt of the notification and request, the Commission shall conduct an inspection and evaluation of the reclamation work involved, wherein such evaluation shall consider, among other things, the degree of difficulty to complete any remaining reclamation, whether pollution of surface and subsurface water is occurring, the probability of continuance of future occurrence of such pollution and the estimated cost of abating such pollution.

(c) The Commission may release in whole or in part said bond or deposit if it is satisfied that reclamation covered by the bond or deposit or portion thereof has been accomplished as required by the approved reclamation plan according to the following schedule:

(1) When the operator completes any required backfilling, regrading, and drainage control of a bonded area in accordance with the approved reclamation plan, the Commission may release up to 75% of the bond or substitute collateral for the applicable permit area; provided, however, that the amount of the unreleased portion of the bond or substitute collateral shall not be less than the amount necessary to assure completion of the reclamation work by a third party in the event of forfeiture.

(2) When the operator has successfully completed the remaining reclamation activities, but not before the expiration of the period specified for operator responsibility in §§11.81 - 11.82 of this title (relating to Surface Mine Closing, and Release), the Commission may release the remaining portion of the bond or substitute collateral; provided, however, that no bond shall be fully released until all reclamation requirements of the approved reclamation plan are fully met.

(d) If the Commission denies the application for release of the bond or portion thereof, it shall notify the operator, in writing, stating the reasons for denial and recommending corrective actions necessary to secure said release.

(e) Where the Commission determines that the application is of significance sufficient to warrant a public hearing, the Commission shall hold a public hearing as provided for in §11.3(f) of this title (relating to Permit Processing).

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on October 9, 2007.

TRD-200704808
Mary Ross McDonald
Managing Director
Railroad Commission of Texas
Earliest possible date of adoption: November 25, 2007
For further information, please call: (512) 475-1295

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SUBCHAPTER F. ENFORCEMENT BY THE COMMISSION

16 TAC §§11.151 - 11.165

The Commission proposes the new rules under Texas Natural Resources Code, §131.021, which authorizes the Commission to promulgate rules pertaining to surface uranium mining and exploration operations; Texas Natural Resources Code, §131.355, which authorizes the Commission to impose fees and mandates the fee collection authorized in House Bill 3837, 80th Legislature (2007) and House Bill 1, Article VI, Railroad Commission Rider 13, 80th Legislature (2007), which requires the Commission to assess fees sufficient to generate during the 2008-2009 Biennium revenue to cover the contingent general revenue appropriation.

Statutory authority: Texas Natural Resources Code, §131.001, *et seq.*, as amended by House Bill 3837, 80th Legislature (2007).

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Texas Natural Resources Code, §131.001, *et seq*., as amended by House Bill 3837, 80th Legislature (2007) is affected by the proposed new rules.

Issued in Austin, Texas on October 9, 2007.

§11.151. Scope.

Sections 11.152 through 11.165 apply to permits issued for exploration activities and for surface mining operations.

§11.152. Inspections.

Without advance notice and on presentation of appropriate credentials to the exploration or mining operation supervisor, if present, the authorized representatives of the Commission are entitled to enter in, on, or through an exploration or surface mining operation or premises in which any records are located, and may at reasonable times and without delay have access to and copy any records and inspect monitoring equipment or methods of operation required under this title.

§11.153. Time and Procedures for Inspection.

(a) An inspection by the Commission shall occur on an irregular basis at a frequency necessary to ensure compliance with the intent and purpose of this chapter and the Commission's rules for exploration or surface mining and reclamation operations covered by each permit.

(b) An inspection shall occur only during normal operating hours if practicable and without prior notice to the permittee or the permittee's agents or employees.

(c) An inspection shall include the filing of an inspection report, which shall be made part of the record and a copy furnished to the operator.

§11.154. Violations Creating Imminent Danger or Causing Imminent Harm.

(a) On the basis of any inspection, if an authorized representative of the Commission determines that a condition or practice exists or that a permittee is in violation of a requirement of this chapter or a permit condition required by this chapter, and that this condition, practice or violation also creates an imminent danger to the health or safety of the public or is causing or can reasonably be expected to cause significant imminent harm to land, air, or water resources, an authorized representative of the Commission shall immediately order a cessation of exploration or surface mining operations on the relevant portion of the area relevant to the condition, practice, or violation.

(b) The cessation order shall set a time and place for a hearing to be held before a Commission examiner as soon after the order is issued as is practicable.

(c) General notice shall be given in the manner that the examiner judges to be practicable under the circumstances.

(d) No more than 24 hours after the commencement of the hearing and without adjournment, the examiner shall affirm, modify, or set aside the cessation order.

§11.155. Violations Not Creating Imminent Danger or Causing Imminent Harm.

(a) On the basis of an inspection, if an authorized representative of the Commission determines that a permittee is in violation of a requirement of this chapter or a permit condition, but the violation does not create an imminent danger to the health or safety of the public or is not causing or reasonably expected to cause significant imminent harm to land, air, or water resources, the Commission shall issue a notice of violation to the permittee or the permittee's agent setting a reasonable time not to exceed 30 days for the abatement of the violation. An extension for the period of time for abatement of the violation make be issued for good cause shown.

(b) If, on expiration of the period of time as originally set or subsequently extended, for good cause shown, and on written finding by the Commission, the Commission finds that the violation has not been abated, it may order a cessation of the exploration or surface mining operations on the portion of the area relevant to the violation. If requested by the permittee, a hearing must be held prior to the Commission issuing a cessation order under this subsection.

(c) The cessation order shall remain in effect until the Commission determines that the violation has been abated or until modified, vacated, or terminated by the Commission under §11.156 of this title (relating to Continuous Violations).

§11.156. Continuous Violations.

(a) On the basis of an inspection, if the Commission has reason to believe that a pattern of violations of any requirement of this chapter or any permit conditions required by this chapter exists or has existed, and if the Commission also finds that these violations are caused by the unwarranted failure of the permittee to comply with the requirements of this chapter or permit conditions or that the violations are willfully caused by the permittee, the Commission shall issue an order to the permittee to show cause as to why the permit should not be suspended or revoked.

(b) The order shall set a time and a place for a public hearing to be held in accordance with the notice and procedural requirements of the Administrative Procedure Act, Texas Government Code, Chapter 2001.

(c) On failure of a permittee to show cause why the permit should not be suspended or revoked, the Commission shall promptly suspend, or revoke the permit.

§11.157. Notice of Violation or Cessation Order.

(a) A notice of violation or cessation order issued under §§11.154 through 11.156 of this title (relating to Violations Creating Imminent Danger or Causing Imminent Harm, Violations Not Creating Imminent Danger or Causing Imminent Harm, and Continuous Violations) shall be in writing, signed by the authorized representative of the Commission who issues it, and shall set forth with reasonable specificity:

(1) the nature of the violation;

(2) the remedial action required, which may include interim steps; and

(3) a period of time for abatement not to exceed 30 days, which may include time for accomplish of interim steps; and

(4) a reasonable description of the portion of the exploration or surface mining and reclamation operation to which it applies.

(b) Each notice of violation or cessation order shall be give promptly to the permittee or the permittee's agent.

(c) A notice of violation or cessation order issued under §§11.154 through 11.156 of this title may be modified, vacated or terminated by the Commission.

(d) An authorized representative of the Commission may extend the time set for abatement or accomplishment of an interim step, if the failure to meet the time previously set was not caused by lack of diligence on the part of the person to whom it was issued. The reason for any extension shall be documented in writing.

§11.158. Civil Action.

(a) The Commission may request the attorney general to institute a civil action for relief, including a permanent or temporary injunction, restraining order, or other appropriate order, if the permittee:

(1) violates or fails or refuses to comply with an order or decision issued by the Commission of this chapter;

(2) interferes with, hinders, or delays the Commission or its authorized representative in carrying out the provisions of this chapter;

(3) refuses to admit an authorized representative to the mine;

(4) refuses to permit inspection of the mine by an authorized representative;

(5) refuses to furnish information or a report requested by the Commission under the Commission's rules; or

(6) refuses to permit access to and copying of records the Commission determines reasonably necessary to carry out the provisions of this chapter.

(b) The action shall be brought in a district court in Travis County or in the county in which the greater portion of the surface mining and reclamation operation is located.

(c) The court has jurisdiction to provide the relief that is appropriate, and relief granted by the court to enforce subsection (a)(1) of this section shall continue in effect until the completion or final termination of all proceedings for review of the order under this chapter unless before that time the district court granting the relief sets the order aside or modifies it.

§11.159. Injunctive Relief and Civil Penalty.

(a) The Commission may have a civil suit instituted for injunctive relief to restrain a permittee from continuing a violation or threatening a violation or for the assessment of a civil penalty of not more than $5,000 as the court considers proper for each day of violation, or for both.

(b) In determining the amount of the civil penalty, consideration shall be given to:

(1) the permittee's history of previous violations under this chapter;

(2) the appropriateness of the penalty to the size of the business of the permittee;

(3) the seriousness of the violation, including irreparable harm to the environment and hazard to the health or safety of the public;

(4) whether the permittee was negligent; and

(5) the demonstrated good faith of the permittee charged in attempting to achieve rapid compliance after notice of the violation.

§11.160. Administrative Penalty.

(a) If a person violates a permit of this chapter and the violation results in pollution of the air or water of this state or poses a threat to the public safety, the person may be assessed a civil penalty by the Commission.

(b) The penalty may not exceed $10,000 per day for each violation. Each day that a violation continues may be considered a separate violation for purposes of penalty assessment.

(c) In determining the amount of the penalty, the Commission shall consider the permittee's history of previous violations of this chapter, the seriousness of the violation, any hazard to the health or safety of the public, and the demonstrated good faith of the permittee or person charged.

§11.161. Penalty Assessment Procedures.

(a) A civil penalty may be assessed only after the person charged with a violation described under §11.160 of this title (relating to Administrative Penalty) has been given an opportunity for a public hearing.

(b) If a public hearing has been held, the Commission shall make findings of fact, and it shall issue a written decision as to the occurrence of the violation and the amount of the penalty that is warranted, incorporating, when appropriate, an order requiring that the penalty be paid.

(c) If appropriate, the Commission shall consolidate the hearings with other proceedings under this chapter.

(d) If the person charged with the violation fails to take the opportunity for a public hearing, a civil penalty may be assessed by the Commission after it has determined that a violation did occur and the amount of the penalty that is warranted.

(e) The Commission shall then issue an order requiring that the penalty be paid.

§11.162. Payment of Penalty and Refund.

(a) On the issuance of notice of violation or a cessation order finding that a violation has occurred, the Commission shall inform the person charged within 30 days of the proposed amount of the penalty.

(b) Within the 30-day period immediately following the day on which the notice of violation or cessation order is issued, the person charged with the penalty shall pay the proposed penalty in full.

§11.163. Criminal Penalty for Violating Permits and Orders.

A person who willfully and knowingly violates a condition of a permit issued under this chapter or fails or refuses to comply with an order issued under §11.157 of this title (relating to Notice of Violation or Cessation Order) or an order incorporated in a final decision issued by the Commission under this chapter, on conviction by a district court, shall be punished by a criminal penalty of not more than $10,000 or by imprisonment for not more than one year or by both.

§11.164. Criminal Penalty for Corporate Permittee.

If a corporate permittee violates a condition of a permit issued under this chapter or fails or refuses to comply with an order issued under §11.157 of this title (relating to Notice of Violation or Cessation Order) or an order incorporated in a final decision issued by the Commission under this chapter, a director, officer, or agent of the corporation who wilfully and knowingly authorized, ordered, or carried out the violation, failure, or refusal, on conviction by a district court, is punishable by a criminal penalty of not more than $10,000 or by imprisonment for not more than one year or by both.

§11.165. Criminal Penalty for False Statement, Representation, or Certification.

A person who knowingly makes a false statement, representation, or certification or who knowingly fails to make a statement, representation, or certification in an application, record, report, plan, or other document filed or required to be maintained under this chapter, on conviction by a district court, is punishable by a criminal penalty of not more than $10,000 or by imprisonment for not more than one year or by both.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on October 9, 2007.

TRD-200704809
Mary Ross McDonald
Managing Director
Railroad Commission of Texas
Earliest possible date of adoption: November 25, 2007
For further information, please call: (512) 475-1295

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PART 4. TEXAS DEPARTMENT OF LICENSING AND REGULATION

CHAPTER 83. COSMETOLOGISTS

16 TAC §§83.10, 83.20, 83.22, 83.25, 83.26, 83.29, 83.31, 83.71, 83.78, 83.80, 83.100

The Texas Department of Licensing and Regulation ("Department") proposes amendments to existing rules at 16 Texas Administrative Code, §§83.10, 83.20, 83.22, 83.25, 83.26, 83.29, 83.31, 83.71, 83.80, 83.100 and a new rule at 16 Texas Administrative Code, §83.78, regarding the regulation of cosmetologists.

These proposed rule changes are the second phase of Department rulemaking necessary to implement changes in law enacted by House Bill 2106, 80th Legislature, and to make certain clean-up changes in the rules for cosmetologists. Also included in these proposed rules are changes to the continuing education requirements for cosmetologists, as recommended by the Advisory Board on Cosmetology, and a reduction in the fee for a revised/duplicate license.

The provisions of House Bill 2106 became effective on June 15, 2007 and require the Commission of Licensing and Regulation to adopt rules necessary to implement the new legislation by January 1, 2008. These proposed rule changes, with the exception of a clean-up change in §83.100, were recommended by the Advisory Board on Cosmetology at its meeting on September 10, 2007. Primarily, the rule changes implement provisions of House Bill 2106 that create two new license types, dual shops and mobile shops. A dual shop license will allow a combined barber and beauty shop to operate under one license. Currently, a combined barber and beauty shop must hold both a barbershop permit and a beauty shop license. A mobile shop license will allow a shop offering cosmetology services to be operated as a mobile unit, rather than in a fixed location.

In §83.10 the definitions of "beauty culture school" and "cosmetology establishment" are amended to clarify that the Department's jurisdiction under the cosmetology statute encompasses establishments that are not licensed. To implement provisions of House Bill 2106, the definition of "cosmetology establishment" is also amended to include dual shops and mobile shops. Definitions are added for the terms "dual shop" and "mobile shop," and the term "self-contained" is added to augment the definition of a mobile shop.

In §83.20(a) and (b) the word "licensed" is inserted to clarify that the cosmetology hours in question must be obtained from a licensed beauty culture school. Subsection (c) is amended to recognize that operator or specialty experience required for issuance of an instructor license may be earned in a dual shop.

Section 83.22 is amended to add licensing requirements for dual shops and mobile shops. A dual shop must comply with all statutory and rule requirements that apply to barbershops and beauty shops. Because of the unique characteristics of a mobile shop and the Department's need to keep track of the location of a mobile shop for the purpose of conducting inspections or investigating complaints, specific requirements are added for mobile shops. A mobile shop must provide the Department with a permanent physical address from which the mobile unit is dispatched and to which the mobile unit is returned when not in use; provide a permanent mailing address where correspondence from the department may be received; furnish a detailed floor plan of the mobile shop; and be inspected and approved by the Department before operation of the mobile shop.

Section 83.25 is amended based upon the Advisory Board on Cosmetology's review of the continuing education requirements. The Board's opinion was that the overall number of continuing education hours for operators should be reduced and that the breakdown of hours into various topics should be changed for all license types. The total number of hours required for an operator is decreased from 12 to six. The number of Sanitation hours required for operators and specialty instructors are decreased from four to two. For each license type, two hours must be earned in law and rule topics other than Sanitation. In addition, clean-up changes are made to remove obsolete language.

Section 83.26 is amended to clarify that the license renewal provisions of the rule apply to establishment licenses as well as individual licenses.

Section 83.29 is amended to clarify that the requirements for an establishment that is relocating do not apply to a mobile shop.

Section 83.31 is amended to add dual shops and mobile shops to the list of license types that have a two-year term.

Section 83.71 is amended to add specific responsibilities that apply to dual shops. Dual shops must comply with all statute and rule requirements that apply to barbershops and those that apply to beauty salons. In addition, a dual shop that is without the services of at least one licensed barber (or cosmetologist) for a period of 90 days or more may not place any advertisement or display any sign or symbol indicating that the shop offers barbering (or cosmetology) services and must remove any existing sign or symbol indicating that the shop offers barbering (or cosmetology) services.

A new §83.78 is added to establish responsibilities that apply specifically to mobile shops. Generally, a mobile shop must comply with health and safety requirements and all other requirements applicable to beauty salons or specialty salons. A mobile shop must maintain a physical address and must notify the Department within 10 days of any change in physical or mailing address. A mobile shop must maintain certain records for one year after the record is made. To facilitate unannounced inspections by the Department, a mobile shop must choose one of two options for enabling the Department to track the shop's location. The mobile shop may have a Global Positioning System (GPS) tracking device that enables the Department to track the shop over the Internet, or the mobile shop may submit weekly itineraries to the Department. Specific requirements are included for the equipment and use of a mobile shop. Finally, the new rule specifies that a mobile shop will be subject to periodic inspections at least four times each year.

Section 83.80 is amended to add application and renewal fees for dual shop and mobile shop licenses. The word "private" is removed before "beauty culture school" to clarify that the application and renewal fees apply to public as well as private beauty culture schools. Based on the Department's annual fee review, the Commission of Licensing and Regulation voted at its meeting on September 21, 2007 to reduce the fee for a revised/duplicate license from $53 to $25. The proposed rule includes this change. This change will bring the fee in line with similar fees in other Department programs. An inspection fee is added for initial inspections of mobile shops. The wording of the risk-based inspection fee provision is changed to ensure that all types of establishment licenses are included. Finally, a provision is added to clarify that fees are generally nonrefundable.

Section 83.100 is amended to include certain statutory language in the definition of "sterilize" or "sterilization." The rule now specifies, as stated in Section 1603.352, Occupations Code, that a

sterilizer used to sterilize instruments in nail services must be listed with the United States Food and Drug Administration.

William H. Kuntz, Jr., Executive Director, has determined that for each year of the first five-year period the proposed amendments and new rule are in effect the changes to costs and revenues of the state will be as follows. The Department estimates that there are 2,500 combined barber and beauty shops that would be eligible for the new dual shop license upon renewal of the licenses. We assume that, because the licenses are issued for a two-year period, half of that number would renew each year. Since the proposed renewal fee of $100 for a dual shop license is lower than the $129 in combined renewal fees for a barbershop license and a beauty shop license, these rule changes will result in an annual decrease in revenue of approximately $36,250. Offsetting this decrease will be a decrease in the Department's costs due to processing fewer renewal applications. The new mobile shop license is not expected to have a significant impact on costs or revenues to the state because we anticipate a small number of applicants for this type of license. The revised/duplicate license fee reduction will result in a decrease in revenue to the Department of approximately $56,000 annually. There will be no changes to costs or revenues of local government as a result of enforcing or administering the amendments and new rules.

Mr. Kuntz also has determined that for each year of the first five-year period the amendments and new rule are in effect, the public benefit will be as follows. Combined barber and beauty shops will have decreased licensing costs that may be passed on to customers. The statutory provision for mobile shops will be implemented in a manner that protects public health and safety.

Mr. Kuntz also has determined that that for each year of the first five-year period the amendments and new rule are in effect there will be decreased costs to shops providing both barbering and cosmetology services because, beginning May 1, 2008, the shop may maintain one dual shop license rather than two separate licenses. The amount of savings for a new license application would be $36 over a two-year period. The amount of savings for license renewal would be $29 over a two-year period. There will be some decreased cost to licensed operators from having to take fewer continuing education hours. The amount of savings to licensees will vary depending on the amount charged by particular continuing education providers. Conversely, the rule may also have some negative financial impact on continuing education providers, which may include small or micro-businesses, because of the reduction in required hours for operator licensees. The amount of any such impact is not known. Mobile shops, which will probably include small or micro-businesses, will likely have significant start-up costs in obtaining the vehicle and necessary equipment. The amount would likely vary widely, and the Department is unable to provide a comprehensive estimate. As an example, the Department is aware of a GPS tracking device system that would cost $469.95, plus $69.95 for service activation and a monthly fee of between $39.95 and $49.95. However, the rules provide an additional option of furnishing a weekly itinerary so that a mobile shop may avoid the expense of obtaining the GPS tracking system.

Comments on the proposal may be submitted to Caroline Jackson, Legal Assistant, Texas Department of Licensing and Regulation, P.O. Box 12157, Austin, Texas 78711, or facsimile (512) 475-3032, or electronically: erule.comments@license.state.tx.us. The deadline for comments is 30 days after publication in the *Texas Register*.

The amendments and new rule are proposed under Texas Occupations Code, Chapters 51, 1602, and 1603, which authorize the Department to adopt rules as necessary to implement those chapters and any other law establishing a program regulated by the Department. In particular, many of these rule changes are proposed to implement the provisions of House Bill 2106, 80th Legislature.

The statutory provisions affected by the proposal are those set forth in Texas Occupations Code, Chapters 51, 1602, and 1603. No other statutes, articles, or codes are affected by the proposal.

§83.10. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) (No change.)

(2) Beauty Culture School--A cosmetology school [~~licensed under the Act~~], public or private that is subject to regulation under the Act.

(3) - (6) (No change.)

(7) Cosmetology establishment--A beauty salon, specialty salon, dual shop, mobile shop, or beauty culture school, public or private, that is subject to regulation [~~licensed~~] under the Act.

(8) Dual Shop--A dual barber and beauty shop licensed under Texas Occupations Code, §1603.205.

(9) [~~(8)~~] Facialist--A person who holds a specialty license and who is authorized to practice the application of facial cosmetics, manipulations, eye tabbing, arches, lash and brow tints, and the temporary removal of hair by the use of depilatory, mechanical tweezers, or wax.

(10) [~~(9)~~] Hair braider--A person authorized by the department to braid hair. Such practice shall not include shampooing, conditioning, drying, styling, or applying any chemicals, including color chemicals, relaxers, perm solutions, or other preparations to alter the color or to straighten, curl or alter the structure of hair. A hair braider may trim hair extensions only as applicable to the braiding process. Commercial hair may be attached only by braiding and without the use of chemicals or adhesives.

(11) [~~(10)~~] Hair weaver--person authorized by the department to perform the services of a hair braider as defined in this section and, additionally, may attach hair by any weaving method. Such practice may include shampooing, conditioning, and drying performed in connection with a hair weaving service. Such practice may not include styling, cutting, or trimming hair except to the extent such activity is incidental to a hair weaving service. Such practice shall not include the application of color chemicals, relaxers, perm solutions, or other preparations to alter the color or to straighten, curl, or alter the structure of hair.

(12) [~~(11)~~] Instructor--An individual authorized by the department to offer instruction in any act or practice of cosmetology under Texas Occupations Code, §1602.002.

(13) [~~(12)~~] Law and Rules Book--Texas Occupations Code, Chapters 1602 and 1603, and 16 Texas Administrative Code, Chapter 83.

(14) [~~(13)~~] License--A department-issued [~~department issued~~] permit, certificate, approval, registration, or other similar permission required by law.

(15) [~~(14)~~] License by reciprocity--A process that permits a cosmetology license holder from another jurisdiction or foreign coun-

try to obtain a Texas cosmetology license without repeating cosmetology education or examination license requirements.

(16) [~~(15)~~] Manicurist--A manicurist may perform only those services defined in Occupations Code §1602.002(10) and (11).

(17) Mobile Shop--A beauty salon, specialty salon, or dual shop that is operated in a self-contained, self-supporting, enclosed mobile unit.

(18) [~~(16)~~] Operator--An individual authorized by the department to perform any act or practice of cosmetology under Texas Occupations Code, §1602.002.

(19) [~~(17)~~] Provisional license--A license that allows a person to practice cosmetology in Texas pending the department's approval or denial of that person's application for licensure by reciprocity.

(20) [~~(18)~~] Registered Examination Proctor--An individual authorized by the department to evaluate or grade a practical examination for the department for a license issued under Texas Occupations Code, Chapter 1602.

(21) Self-Contained--containing within itself all that is necessary to be able to operate without connecting to outside utilities such as water and electricity.

(22) [~~(19)~~] Shampoo Apprentice--A person authorized to perform the practice of cosmetology as defined in §1602.002(3), relating to shampooing and conditioning a person's hair.

(23) [~~(20)~~] Specialty Instructor--An individual authorized by the department to offer instruction in an act or practice of cosmetology limited to Texas Occupations Code, §1602.002(7), (9), and/or (10). Specialty instructors may only teach the subject matter in which they are licensed.

(24) [~~(21)~~] Specialty Salon--A cosmetology establishment in which only the practice of cosmetology as defined in Texas Occupations Code, §1602.002(2), (4), (7), (9), or (10) is performed. Specialty salons may only perform the act or practice of cosmetology in which the salon is licensed.

(25) [~~(22)~~] Weaving--The process of attaching, by any method, commercial hair (hair pieces, hair extensions) to a client's hair and/or scalp. Weaving is also known as hair integration or hair intensification.

(26) [~~(23)~~] Wet disinfectant soaking container--A container with a cover to prevent contamination of the disinfectant solution and of a sufficient size such that the objects to be disinfected may be completely immersed in the disinfectant solution.

§83.20. License Requirements--Individuals.

(a) To be eligible for an operator license, facialist specialty license, or manicurist specialty license, an applicant must:

(1) - (4) (No change.)

(5) have completed the following hours of cosmetology curriculum in a licensed beauty culture school:

(A) for an operator license, one of the following:

(i) 1500 hours of instruction in a beauty culture school; or

(ii) 1000 hours of instruction in beauty culture courses and 500 hours of related high school courses prescribed by the department in a vocational or career and technical cosmetology program in a public school.

(B) for a facialist specialty license, 750 hours of instruction.

(C) for a manicurist specialty license, 600 hours of instruction; and

(6) (No change.)

(b) (No change.)

(c) To be eligible for an instructor license, facial instructor specialty license or manicure instructor specialty license, an applicant must:

(1) - (4) (No change.)

(5) meet the following requirements:

(A) for an instructor license, hold an active operator license and have completed one of the following:

(i) 750 hours in methods of teaching the student; or

(ii) 250 hours in methods of teaching the student, if the applicant can verify two years of operator [~~working~~] experience in a licensed beauty salon or dual shop.

(B) for a facial instructor specialty license, hold an active operator or facialist specialty license and have completed one of the following:

(i) 750 hours in methods of teaching the student; or

(ii) 250 hours in methods of teaching the student, if the applicant can verify two years of facial experience in a licensed beauty salon , dual shop, or facial specialty salon.

(C) for a manicure instructor specialty license, hold an active operator or manicurist specialty license and have completed one of the following:

(i) 750 hours of instruction in cosmetology courses and methods of teaching in a department-approved school or program, or

(ii) 250 hours in methods of teaching the student, if the applicant can verify two years of manicure experience in a licensed beauty salon , dual shop, or manicure specialty salon.

(d) - (g) (No change.)

§83.22. License Requirements--Beauty Salons, Specialty Salons, Dual Shops, Mobile Shops, and Booth Rentals (Independent Contractors).

(a) To be eligible for a beauty salon, specialty salon, dual shop, mobile shop, or booth rental license, an applicant must:

(1) obtain the current law and rules book;

(2) comply with the requirements of the Act and this chapter;

(3) submit a completed application on a department-approved form;

(4) pay the fee required under §83.80; and

(5) for a booth rental license, hold an active department-issued cosmetology license.

(b) In addition to the requirements of subsection (a), a dual shop license applicant must comply with the requirements to the Act, this chapter, Texas Occupations Code, Chapter 1601, and 16 TAC Chapter 82 for obtaining a beauty salon license and a barbershop permit;

(c) In addition to the requirements of subsection (a), a mobile shop license applicant must:

(1) provide a permanent physical address from which the mobile unit is dispatched and to which the mobile unit is returned when non in use;

(2) provide a permanent mailing address where correspondence from the department may be received;

(3) furnish a detailed floor plan of the mobile shop showing compliance with the requirements of the Act and this chapter; and

(4) obtain an inspection of the mobile shop and be approved by the department prior to the operation of the mobile shop. To ensure timely inspection, an applicant should submit a completed application at least 45 days in advance of the anticipated date of beginning operation of the mobile shop.

§83.25. License Requirements--Continuing Education.

(a) Terms used in this section have the meanings assigned by Chapter 59 of this title, unless the context indicates otherwise.

(b) To renew an operator [~~or instructor~~] license [~~on or after September 1, 2006~~], a licensee must complete a total of 6 [~~12~~] hours of continuing education through department-approved [~~department approved~~] courses. The continuing education hours must include the following:[~~,~~]

(1) at least 2 [~~of which 4~~] hours [~~must be~~] in Sanitation required under the Act and 16 Texas Administrative Code, Chapter 83 ; and [~~.~~]

(2) at least 2 hours in the Act and 16 Texas Administrative Code, Chapter 83, addressing topics other than Sanitation.

(c) To renew a [~~manicure instructor specialty license,~~] manicurist specialty license, [~~facial instructor specialty license,~~] facialist specialty license, hair weaving specialty certificate, hair braiding specialty certificate, wig specialty certificate, and shampoo/conditioning specialty certificate [~~on or after September 1, 2006~~], a licensee must complete a total of 8 hours of continuing education through department-approved courses. The continuing education hours must include the following: [~~,~~]

(1) at least [~~of which~~] 4 hours [~~must be~~] in Sanitation required under the Act and 16 Texas Administrative Code, Chapter 83 ; and [~~.~~]

(2) at least 2 hours in the Act and 16 Texas Administrative Code, Chapter 83, addressing topics other than Sanitation.

(d) To renew an instructor license, a licensee must complete a total of 12 hours of continuing education through department-approved courses. The continuing education hours must include the following: [~~If a licensee holds an instructor license, facial instructor specialty license, or manicure instructor specialty license, then, of the total hours required under subsections (b) or (c), the licensee must complete 2 hours in Methods of Teaching in accordance with §83.120.~~]

(1) at least 4 hours in Sanitation required under the Act and 16 Texas Administrative Code, Chapter 83;

(2) at least 2 hours in the Act and 16 Texas Administrative Code, Chapter 83, addressing topics other than Sanitation; and

(3) at least 2 hours in Methods of Teaching in accordance with §83.120.

(e) To renew a facial instructor specialty license or manicure instructor specialty license, a licensee must complete a total of 8 hours of continuing education through department-approved courses. The continuing education hours must include the following:

(1) at least 2 hours in Sanitation required under the Act and 16 Texas Administrative Code, Chapter 83;

(2) at least 2 hours in the Act and 16 Texas Administrative Code, Chapter 83, addressing topics other than Sanitation; and

(3) at least 2 hours in Methods of Teaching in accordance with §83.120.

(f) [~~(e)~~] For a timely or a late renewal, a licensee must complete the required continuing education hours within the two year period immediately preceding the renewal date.

(g) [~~(f)~~] A licensee may receive continuing education hours in accordance with the following:

(1) A licensee may not receive continuing education hours for attending the same course more than once.

(2) A [~~Except as provided within this subsection, a~~] licensee will receive continuing education hours for only those courses that are registered with the department, under procedures prescribed by the department.

(h) [~~(g)~~] A licensee shall retain a copy of the certificate of completion for a course for two years after the date of completion. In conducting any inspection or investigation of the licensee, the department may examine the licensee's records to determine compliance with this subsection.

(i) [~~(h)~~] To be approved under Chapter 59 of this title, a provider's course must be dedicated to instruction in one or more of the following topics:

(1) Sanitation required under the Act and 16 Texas Administrative Code, Chapter 83 [~~Texas Occupations Code, Chapters 1602 and 1603~~];

(2) the Act and 16 Texas Administrative Code, Chapter 83, addressing topics other than Sanitation; [~~16 Texas Administrative Code, Chapter 83; and/or~~]

(3) Methods of Teaching in accordance with §83.120; and/or

(4) [~~(3)~~] the curriculum subjects listed in 16 Texas Administrative Code, §83.120.

(j) [~~(i)~~] A registered course may be offered until the expiration of the course registration or until the provider ceases to hold an active provider registration, whichever occurs first.

(k) [~~(j)~~] A provider shall pay to the department a continuing education record fee of $5 for each licensee who completes a course for continuing education credit. A provider's failure to pay the record fee for courses completed [~~on or after February 1, 2006~~] may result in disciplinary action against the provider, up to and including revocation of the provider's registration under Chapter 59 of this title.

(l) [~~(k)~~] Notwithstanding subsections [~~Subsections~~] (b), (c), [~~and~~] (d), and (e), a licensee may satisfy the continuing education requirement for renewal by completing two hours of Sanitation in department-approved courses, if the licensee:

(1) is at least 65 years of age; and

(2) has held a cosmetology license for at least 15 years.

§83.26. License Requirements--Renewals.

(a) To renew a license [~~an instructor license, manicure instructor specialty license, facial instructor specialty license, operator~~

~~license, manicurist specialty license, facialist specialty license, hair weaving specialty certificate, hair braiding specialty certificate, wig specialty certificate, and shampoo/conditioning specialty certificate~~], an applicant must:

(1) comply with applicable requirements of the Act and this chapter [~~complete the continuing education requirements under §83.25~~];

(2) submit a completed application on a department-approved form; and

(3) pay the applicable fee required under §83.80.

(b) In addition to the requirements of subsection (a), an applicant must complete the continuing education requirements under §83.25 to renew an instructor license, manicure instructor specialty license, facial instructor specialty license, operator license, manicurist specialty license, facialist specialty license, hair weaving specialty certificate, hair braiding specialty certificate, wig specialty certificate, and shampoo/conditioning specialty certificate.

(c) [~~(b)~~] In addition to the requirements of subsection (a), to renew an examination proctor registration, a registrant must hold an active instructor license.

(d) [~~(c)~~] To renew and maintain continuous licensure, the renewal requirements under this section must be completed prior to the expiration of the license. A late renewal means the licensee will have an unlicensed period from the expiration date of the expired license to the issuance date of the renewed license. During the unlicensed period, a person may not perform any act of cosmetology that requires a license under this chapter.

(e) [~~(d)~~] Non-receipt of a license renewal notice from the department does not exempt a person from any requirements of this chapter.

(f) [~~(e)~~] A student permit must be renewed prior to the expiration date of the student permit by submitting a completed application on a department-approved form.

§83.29. Establishment Relocation, Change of Ownership, Owner Death or Incompetency.

(a) (No change.)

(b) If an establishment relocates, the licensee must apply for a new establishment license and verify that the new establishment meets the requirements of the Act and this chapter. Additionally, a relocated beauty culture school must be inspected prior to operation under the Act. The requirements of this subsection do not apply to mobile shops.

(c) (No change.)

§83.31. Licenses--License Terms.

(a) The following licenses have a term of two (2) years:

(1) - (11) (No change.)

(12) beauty and specialty salon license; [~~and~~]

(13) dual shop license;

(14) mobile shop license; and

(15) [~~(13)~~] student permit.

(b) - (c) (No change.)

§83.71. Responsibilities of Beauty Salons, Specialty Salons, Dual Shops, and Booth Rentals.

(a) - (e) (No change.)

(f) In addition to the requirements of subsection (e):

(1) - (7) (No change.)

(8) Dual shops shall:

(A) comply with all requirements of the Act and this chapter applicable to beauty salons;

(B) comply with all requirements of Texas Occupations Code, Chapter 1601, and 16 TAC Chapter 82 applicable to barbershops; and

(C) if the shop is without the services of at least one licensed barber (or cosmetologist) for a period of 90 days or more:

(i) not place any advertisement or display any sign or symbol indicating that the shop offers barbering (or cosmetology) services; and

(ii) remove any existing sign or symbol indicating that the shop offers barbering (or cosmetology) services.

(g) - (k) (No change.)

§83.78. Responsibilities of Mobile Shops.

(a) A mobile shop shall comply with all health and safety requirements and all other requirements of the Act and this chapter for beauty salons or specialty salons, as applicable, except as modified by this section or as otherwise indicated.

(b) A mobile shop license holder shall maintain a permanent physical address as required by §83.22(c). The mobile shop shall notify the department in writing of any change in physical or mailing address within 10 calendar days of the change.

(c) Records of appointments, itineraries, license numbers of employees and independent contractors, and vehicle identification numbers of the mobile shop shall be kept within the unit and made available for inspection by department personnel. Records of appointments and itineraries shall be kept for a period of at least one year from the date the record is made.

(d) A mobile shop shall either:

(1) have a Global Positioning System (GPS) tracking device that enables the department to track the location of the mobile shop over the Internet and meet the following requirements:

(A) the device shall be on board and functioning at all times the mobile shop is in operation or open for business; and

(B) the mobile shop shall provide the department with all information necessary to track the shop over the Internet; or

(2) submit to the department, in a manner specified by the department, a weekly itinerary showing the dates, exact locations, and times of service to be provided. The license holder shall submit the itinerary not less than 7 calendar days prior to the beginning of service described in the itinerary and shall submit to the department any changes in the itinerary not less than 24 hours prior to the change. A mobile shop shall follow the itinerary in providing service.

(e) Furniture shall be anchored to the unit.

(f) All chemicals in the mobile shop shall be stored in cabinets secured with safety catches and shall be stored separate and apart from other articles or equipment in the shop.

(g) A mobile shop shall display on both sides of the exterior of the mobile shop, the mobile shop's license number and a sign stating the name of the shop.

(h) A mobile shop shall have a water heater that provides fresh, hot water continuously and on demand.

(i) A mobile unit shall have a fresh water tank holding a sufficient amount of fresh water to perform the day's business. If a mobile unit's fresh water supply is depleted, operation must cease until the supply is replenished.

(j) A mobile shop shall have a functioning restroom within its perimeter, including a self-contained, flush toilet with holding tank..

(k) No services may be performed outside the mobile shop or while the mobile shop is in motion.

(l) A mobile shop may not be used as a residence or for any other purpose besides providing cosmetology services.

(m) Periodic inspections of mobile shops under §83.52 shall be conducted at least four times each year.

§83.80. Fees.

(a) Application fees.

(1) - (15) (No change.)

(16) Dual Shop--$130

(17) Mobile Shop--$175

(b) Renewal fees.

(1) - (15) (No change.)

(16) Dual Shop--$100

(17) Mobile Shop--$175

(c) - (d) (No change.)

(e) Revised/Duplicate License/Certificate/Permit/Registration--$25 [~~$53~~]

(f) (No change.)

(g) Inspection Fees (for each occurrence).

(1) Mobile Shop [~~Salon~~]--$35

(2) School (public and private)--$200

(3) Risk-based Inspection of establishments [~~(salons, public schools, private schools)~~]--$150

(h) - (k) (No change.)

(l) All fees are nonrefundable, except as otherwise provided by law or commission rule.

§83.100. Health and Safety Definitions.

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) - (8) (No change.)

(9) Sterilize or sterilization--To make free from live bacteria or other microorganisms by use of an autoclave, dry heat or ultraviolet light sterilizer that is listed with the United States Food and Drug Administration.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on October 15, 2007.

TRD-200704896

Brian E. Francis
Deputy Executive Director
Texas Department of Licensing and Regulation
Earliest possible date of adoption: November 25, 2007
For further information, please call: (512) 463-7348

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CHAPTER 84. DISCOUNT HEALTH CARE CARD PROGRAM

16 TAC §§84.1, 84.10, 84.20, 84.21, 84.70 - 84.75, 84.80, 84.90, 84.91

The Texas Department of Licensing and Regulation ("Department") proposes new rules at 16 Texas Administrative Code, §§84.1, 84.10, 84.20, 84.21, 84.70 - 84.75, 84.80, 84.90, and 84.91 regarding the new discount health care card program.

Discount health care card programs are non-insurance programs that offer consumers access to health care services at discount rates. Under these programs, consumers pay a one-time enrollment fee and ongoing membership fees. In exchange for these fees, consumers receive a discount health care card that may be presented to receive discounts on specific health care services that are provided by specific health care providers who agree to provide discounts under the programs.

These rules are necessary to implement House Bill 3064, 80th Legislature, Regular Session, 2007, which provides for the registration of discount health care card program operators with each of their programs and the regulation of these programs' operations.

New §84.1 sets out the authority of the Department and its governing body, the Texas Commission of Licensing and Regulation ("Commission"), to establish these rules.

New §84.10 defines terms as used in the statute and the rules, including "clear and conspicuous," "complaint," "complainant," "discount," "discount health care card program," "discount health care card program operator," "health care services," "membership fee," "nominal one-time enrollment fee," and "valid cancellation notice."

New §84.20 establishes the registration requirements for a discount health care card program operator with each of its programs. A program operator must submit the information specified in this section that includes an application, registration fee, surety bond, written disclosure materials that will be provided to members, lists of providers who have agreed to provide health care services under the program, and the program's complaint resolution procedures. The registration is valid for one year and must be renewed annually.

New §84.21 establishes the annual renewal registration requirements for a discount health care card program operator with each of its programs.

New §84.70 describes the list of written materials that the program operator must provide to each member. These materials include a membership card, a statement that the discount health care card program is not insurance, a statement that the Department regulates discount health care card programs, the program operator's cancellation policy and information on the member's right to cancel the membership.

New §84.71 requires each discount health care card program to implement and maintain a written complaint resolution procedure. This section sets out the minimum standards regarding how long the program operator has to respond to and resolve a complaint.

New §84.72 requires each program operator to maintain a surety bond based on the number of membership cards that the program operator has issued. This section sets out the required surety bond elements and amounts.

New §84.73 requires all discount health care card program advertising to be in plain language, clear and conspicuous, and non-deceptive. This section lists prohibited advertising practices for program operators and marketers.

New §84.74 requires a program operator to maintain copies of all records to be available for inspection by the Department. These records include lists of adversarial proceedings against the program operator, copies of contracts with providers and marketers, copies of marketing materials, lists of requests for refunds, and lists of complaints.

New §84.75 requires a program operator to file monthly and quarterly reports. Monthly reports include identification of all private label names that are being used for a discount health care card program. Quarterly reports include the number of discount health care cards issued the previous quarter, the total number of active discount health care cards, lists of current providers and marketers, and lists of providers and marketers who are no longer participating in the program.

New §84.80 establishes the fees for initial registrations, renewal registrations, duplicate registrations, and late renewals.

New §84.90 provides the grounds for denying an initial or renewal registration and states that administrative penalties and/or sanctions may be imposed against a program operator that violates the statute or rules.

New §84.91 describes the Department's authority to conduct inspections and investigations as necessary to enforce the statute and the rules.

William H. Kuntz, Jr., Executive Director of the Department, has determined that for each year of the first five-year period the new rules are in effect, there will be costs to the Department to enforce and administer these rules. The expected cost is approximately $280,000 per year. Fees, which are included in the rules, have been set to generate revenues sufficient to cover these costs. There is no anticipated fiscal implication for units of local government.

Mr. Kuntz has determined that for each year of the first five-year period the new rules are in effect, the public benefit will be the registration of discount health care card program operators with each of their programs and the regulation of these programs' operations. In addition, the rules will more clearly define the requirements for discount health care card programs, operators, and marketers and the consumer protections for individuals who purchase discount health care cards.

Mr. Kuntz also has determined that for each year of the first five-year period the new rules are in effect, there will be economic costs imposed on persons and businesses that are required to register under these new rules. These costs may include initial registration fees, annual renewal registration fees, surety bonds premiums, expenses for maintaining records and filing reports with the Department, and expenses associated with providing the required documents to consumers. In addition, there may be economic costs for complying with the proposed rules for small and micro businesses. In drafting the rules, the Department has tried to minimize any adverse economic effect by allowing for electronic registration and report filing and by setting surety bond requirements based on the size of the program operator's membership. There is no anticipated negative impact on local employment.

Comments on the proposal may be submitted by mail to Caroline Jackson, Legal Assistant, General Counsel's Office, Texas Department of Licensing and Regulation, P.O. Box 12157, Austin, Texas 78711; by facsimile to (512) 475-3032; or by email to erule.comments@license.state.tx.us. The deadline for comments is 30 days after publication in the *Texas Register.*

The new rules are proposed under Texas Health and Safety Code Chapter 76, which directs the Department's governing body, the Commission, to adopt rules to implement the discount health care program, and Texas Occupations Code Chapter 51, which authorizes the Commission to adopt rules as necessary to implement this chapter and any other law establishing a program regulated by the Department.

The statutory provisions affected by the proposal are those set forth in Texas Health and Safety Code Chapter 76, Texas Occupations Code Chapter 51, and Texas Business and Commerce Code Chapter 17. No other statutes, articles, or codes are affected by the proposal.

§84.1. Authority.

These rules are promulgated under the authority of the Texas Health and Safety Code, Chapter 76, Discount Health Care Programs and the Texas Occupations Code, Chapter 51, Texas Department of Licensing and Regulation. These rules should be read in conjunction with Chapter 76.

§84.10. Definitions.

The following words and terms, when used in this chapter or used in the Act and applied by the commission and department, shall have the following meanings, unless the context clearly indicates otherwise:

(1) Act--Texas Health and Safety Code, Chapter 76, Discount Health Care Programs.

(2) Clear and conspicuous or clearly and conspicuously--

(A) For print communications, the message shall be in a type size and location sufficiently noticeable for an ordinary consumer to read and comprehend it, in print that contrasts with the background against which it appears.

(B) In communications disseminated orally, the message shall be delivered in a volume and cadence sufficient for an ordinary consumer to comprehend it.

(C) In communications made through an electronic medium (such as television, video, radio, and interactive media such as the Internet, online services, and software), the message shall be presented simultaneously in both the audio and visual portions of the communication. In any communication presented solely through visual or audio means, the message may be made through the same means by which the communication is presented. Any audio message shall be delivered in a volume and cadence sufficient for an ordinary consumer to hear and comprehend it. Any visual message shall be of a size and shade, with a degree of contrast to the background against which it appears, and shall appear on the screen for a duration and in a location sufficiently noticeable for an ordinary consumer to read

and comprehend it. The message shall be in understandable language and syntax. Nothing contrary to, inconsistent with, or in mitigation of the message shall be used in any communication. With regard to interactive media, the disclosure shall also be unavoidable (i.e., the disclosure appears on the screen without the need to click on an icon to view the terms of the disclosure).

(3) Complainant--Any potential, current or former member, or any potential, current or future provider, or any other person who files a complaint with a discount health care card program operator.

(4) Complaint--Any dissatisfaction expressed orally or in writing by a complainant to a discount health care card program operator regarding any aspect of the discount health care card program.

(A) The term includes any dissatisfaction by any complainant relating to the availability of contracted discounts or services or other matters relating to the statements, representations, or contractual obligations of a discount health care card program to members or providers. Examples of complaints include, but are not limited to, the following:

(i) a member experiences difficulty in locating a provider in his or her geographic area that accepts the discount health care card program card;

(ii) a member does not obtain the advertised discount;

(iii) a member has difficulty getting a provider that is under contract with a program to accept the discount health care card program card;

(iv) a member questions the program operator's billing practice including continued billing after termination of membership; or

(v) a member has difficulty terminating membership and/or obtaining a refund.

(B) The term does not include:

(i) a misunderstanding or a problem of misinformation that is resolved promptly by clearing up the misunderstanding or supplying the appropriate information to the satisfaction of the potential complainant; or

(ii) a member's oral or written expression of dissatisfaction or disagreement regarding the type or quality of the health care service provided by a provider.

(5) Discount--The difference between the amount paid by a consumer who has no contractual relationship with a third-party payor and pays in cash or its equivalent at the time of service, and the amount paid by a consumer who presents the discount health care card at the time of service and pays for the service in cash or its equivalent.

(6) Discount health care card program--A discount health care program as defined by the Act.

(7) Discount health care card program operator--A discount health care program operator as defined by the Act.

(8) Health care services--Services, supplies, products and procedures for the diagnosis, prevention, treatment, cure or relief of a health condition, illness, injury or disease including but not limited to dental and eye care, physician care, chiropractic care, products and services provided by and through hospitals or laboratories, and prescription drugs and pharmaceutical services, supplies, and products.

(9) Membership card or discount health care card--The card that a member receives in exchange for paying a nominal one-time enrollment fee plus membership fees and that entitles the member to receive discounts on specific health care services provided by specific providers pursuant to the discount health care card program.

(10) Membership fee--All fees, dues, charges or monies required to be paid by a consumer to the discount health care program to ensure continued membership in the program. The membership fee may be in the form of a lump sum payment or reoccurring payments (i.e. monthly payments). The membership fee does not include money paid as a nominal one-time enrollment fee or money paid by the consumer to a provider for health care services received.

(11) Nominal one-time enrollment fee or one-time enrollment fee--All non-refundable fees, charges or monies paid by a consumer to the discount health care program related to enrollment in the program. The total amount of this enrollment fee may not exceed $60.

(12) Program operator--A discount health care card program operator.

(13) Valid cancellation notice--The method of notification from a member of a discount health care card program provided to a program operator that is required for membership cancellation and that meets the following requirements:

(A) At a minimum, a program operator must provide members an addressed and postage paid postcard, or letter with addressed and postage paid envelope, that includes a detachable portion on which are clear and conspicuous instructions for the member regarding how to use the postcard or letter to cancel membership and to record the date of mailing such notice to the program operator.

(B) In addition to subparagraph (A), the program operator may provide members with alternative methods of cancelling the membership including internet website, e-mail, or toll-free telephone number. These alternative methods of cancellation must accurately record the date and time of the notice of cancellation.

§84.20. Registration Requirement--Program Operator.

(a) A program operator shall register each discount health care card program that the program operator intends to offer or operate by submitting all of the following to the department in the manner prescribed by the executive director:

(1) a completed application for registration which contains all the information required by §76.101 of the Act and including:

(A) all assumed names currently or intended to be used by the program operator;

(B) all private label names used for the discount health care card program; and

(C) the name, physical address, and mailing address of the program operator's agent for service of process in this state;

(2) the fee required by §84.80;

(3) a surety bond that complies with §84.72;

(4) a copy of the written disclosure material required by §84.70;

(5) the toll-free telephone number and Internet website to be used by members to obtain information about the discount health care card program and confirm or find providers currently participating in the discount health care card program;

(6) the list of providers or networks that have agreed to provide health care services under the program, which may be

accomplished by identification of an internet website that identifies such providers;

(7) a copy of each type of membership card issued under the discount health care card program;

(8) a copy of the program application form and any other membership agreements to be used for the program that comply with the requirements of §76.054(5) of the Act;

(9) a copy of the discount health care card program's complaint resolution procedure that complies with the requirements of §84.71 and that is fair and efficient as determined by the executive director; and

(10) any other information the department determines necessary.

(b) The registration is valid for one year from the date issued by the department and must be renewed annually.

§84.21. Registration Requirement--Renewal.

A program operator may renew a registration for a discount health care card program if the program operator submits all of the following to the department in the manner prescribed by the executive director:

(1) an application;

(2) the fee required by §84.80;

(3) a surety bond that complies with §84.72 or a continuation certificate that is issued by the surety bond company and is satisfactory to the department to confirm the continued validity of the current bond submitted by the program operator and that identifies:

(A) the program operator as the principal for the bond;

(B) the executive director as the obligee; and

(C) a term for the succeeding year; and

(4) an updated version of any information provided to the department that has changed or been amended since the initial registration or subsequent approved renewals.

§84.70. Responsibility of the Registrant--General.

(a) No later than 15 days after enrolling a new member, a discount health care card program operator shall provide each new member a membership card and the written materials described in §76.053 of the Act, which shall include:

(1) the following statements on the first page of the materials when opened in the top one-quarter of the page, each as a stand alone paragraph, in bold with a minimum fourteen-point type face:

(A) "This discount health care card program is NOT insurance"; and

(B) "You may cancel this membership within 30 days after joining this discount health care card program and you will receive a refund of all membership fees paid to this discount health care card program other than money paid as a nominal one-time enrollment fee or money that you may have paid to a provider for health care services or products received.";

(2) the following statement clearly and conspicuously in close proximity to the signature line, or acceptance icon if internet application, by which a new member accepts the terms of membership, in bold with a minimum fourteen-point type face: "Note to Texas Consumers: Regulated by the Texas Department of Licensing and Regulation, P.O. Box 12157, Austin, Texas 78711; telephone 1-800-803-9202 or (512) 463-6599; website: www.license.state.tx.us/complaints."; and

(3) a statement that unresolved complaints concerning a discount health care card program or questions concerning the regulation of a program operator may be addressed to the department. The notification may be stamped on the contract or printed on a separate sheet and stapled to the contract; and

(4) the written cancellation policy under subsection (c).

(b) Within 90 days of registration with the department, a discount health care card program operator, who has enrolled members in this state prior to the date of registration with the department, must provide all such members a copy of the complaint resolution procedures required by §84.71.

(c) A discount health care card program shall have a written cancellation policy which:

(1) identifies the valid cancellation notice used for the program and provides instructions to members regarding how to use the cancellation method(s);

(2) provides for a refund of all membership fees paid by a new member when the member submits to the program operator a valid cancellation notice no later than 30 days after the member receives the membership card; and

(3) states that the program operator will accept and cancel program memberships at any time during the membership period and that the program operator will cease collecting membership fees in a reasonable amount of time, but no later than 30 days after receiving a valid cancellation notice.

§84.71. Responsibility of the Registrant--Complaint Resolution Procedure.

(a) For each discount health care card program offered or operated, a program operator shall implement and maintain a written complaint resolution procedure approved by the department that identifies and provides reasonable procedures to investigate and resolve all complaints initiated by a complainant concerning the discount health care card program.

(b) The department may examine each discount health care card program's complaint resolution procedure for compliance with this section and may require a program operator to make corrections the department deems necessary.

(c) If any complainant notifies a program operator of a complaint, the program operator, not later than the fifth business day after the date of receiving the complaint, shall send to the complainant a letter acknowledging the date of receipt of the complaint. The letter must:

(1) include a description of the program's complaint resolution procedures and time frames;

(2) if the complaint is made orally, be accompanied by a postage paid envelope and a one-page complaint form that clearly and conspicuously states that the form must be returned to the program operator for prompt resolution of the complaint; and

(3) clearly and conspicuously state that unresolved complaints may be addressed to the department by contacting Texas Department of Licensing and Regulation, P.O. Box 12157, Austin, Texas 78711; telephone 1-800-803-9202 or (512) 463-6599; website: www.license.state.tx.us/complaints.

(d) A program operator shall acknowledge and investigate a complaint and provide the complainant with the results of its investigation not later than the 30th calendar day after the date the program operator receives the written complaint or, in the case of an oral complaint, the one-page complaint form from the complainant.

(e) Notwithstanding subsections (c) and (d), in the event that a complaint concerns the payment of emergency or urgent health care services, a discount health care card program operator shall investigate such complaint and provide the results of its investigation:

(1) in accordance with the medical or dental immediacy of the case; and

(2) not later than one business day after the program operator receives the complaint.

(f) As part of the complaint resolution procedure, a program operator shall:

(1) record and track by date all complaints received;

(2) investigate all such complaints against the discount health care card program and take all necessary steps to resolve any and all complaints;

(3) provide a refund or other adjustment as appropriate; and

(4) document how it handled each such complaint and how each complaint was resolved.

(g) The program operator shall require marketers of the discount health care card program to inform the program operator of any and all complaints concerning the discount health care card program. All such complaints shall be handled according to the discount health care card program's complaint resolution procedure.

§84.72. Responsibility of the Registrant--Financial Security.

(a) The program operator shall maintain a surety bond based on the number of membership cards issued by the program operator for all of the discount health care card programs for which such program operator has registered with the department, in the amounts identified as follows:

(1) for a program operator with 1 to 25,000 membership cards issued, the program operator shall maintain a surety bond in the amount of $50,000;

(2) for a program operator with 25,001 to 100,000 membership cards issued, the program operator shall maintain a surety bond in the amount of $100,000; or

(3) for a program operator with 100,001 or more membership cards issued, the program operator shall maintain a surety bond in the amount of $150,000.

(b) The surety bond shall:

(1) be issued by a company authorized to do business as a surety in the State of Texas;

(2) conform to the Texas Insurance Code;

(3) be on a form approved by the department;

(4) be payable:

(A) to the executive director on the determination by the executive director that funds are necessary for the payment of consumer claims following compliance with Texas Occupations Code, Chapter 51, Subchapter F and the rules promulgated by the Commission; or

(B) upon judgment against the program operator arising from a consumer claim obtained by a potential, current or former member of the program;

(5) state that the issuing company will provide the department 30 days prior written notice of its intent to cancel the bond; and

(6) be effective for the entire time period of the registration.

(c) Prior to the date that a program operator ceases to hold a valid and active registration, a program operator must submit proof of a surety bond in the amount required in subsection (a) payable to the executive director to be effective for a period of one year from the date the program operator ceases to hold a valid and active registration and in compliance with the other terms of this section.

(d) Failure to maintain the bond for the entire time period required by this section and the Act will be cause for the executive director to institute action to impose administrative and/or civil sanctions and penalties.

§84.73. Responsibility of the Registrant--Statements, Representations, and Advertising.

(a) All discount health care card program advertising, regardless of the form of dissemination, must be in plain language, clear and conspicuous and non-deceptive. Deception includes direct statements or representations in the advertisement or from reasonable inferences that may be drawn from any statement or representation in the advertisement, or from disclaimers that contradict, confuse, unreasonably limit or materially modify a principal message of the advertisement. Deception also includes, but is not limited to, the failure to clearly and conspicuously disclose any material facts, including limitations, disclaimers, qualifications, conditions, exclusions or restrictions.

(b) A program operator or a marketer shall not engage in the following advertising practices:

(1) Use of any price, price range or other discount or savings figure or range in any statement, representation, or advertisement, that does not represent the price, price range or other discount or savings figure or range that a consumer can typically expect to obtain. In the case of price ranges or discount or savings ranges, use of ranges that are too large, as where the discount or savings represented at the uppermost portion of the range was achieved by only a few members of the discount health care card program;

(2) Use of statements or representations that misrepresent directly or implicitly, the size and/or location of a provider network;

(3) Use of statements or representations that suggest, directly or by implication, that the discount health care card program is a form of health insurance. This includes, but is not limited to, the use of terms such as "co-payment," "coverage," "deductibles," and "premiums," which are terms generally used in the context of health insurance;

(4) Use of statements or representations that misrepresent, directly or implicitly that the discount health care card program is a federally approved Medicare prescription discount health care card program. This includes, but is not limited to, use of the term "senior card" for a discount health care card program that covers family members of all ages, or use of logos that resemble those of a federal government agency;

(5) Use of any unexplained abbreviation or jargon that is confusing, misleading or not readily understood by the general public;

(6) Use of one or more footnotes or asterisks which, alone or in combination, contradict, confuse, materially modify or unreasonably limit a principal message of the advertisement;

(7) For important disclosures, use of print type size so small as to be not easily readable, i.e., typeface size under 10-point;

(8) Use of color contrasts which render the text difficult to read. This includes, but is not limited to, the use of grey print on a grey background without sufficient contrast to make it easily readable;

(9) Use of inaccurate or misleading photographs, logos or illustrations when describing the discount health care card program.

This includes, but is not limited to, depicting the logo of a major health organization or federal or state government agency, or a simile thereof, in a manner as to suggest that such organization or agency endorses the discount health care card program when there is no such endorsement;

(10) Use of the terms "free," "no obligation," "discounted," "reduced," or words of similar import, without disclosing clearly and conspicuously, and in close proximity to such statement or representation, any and all conditions, limitations and restrictions on the ability of the consumer to obtain or use any such purportedly free or discounted good or service prior to requesting the consumer's authorization to be charged or billed for the goods or services with which the purportedly free or discounted good or service is offered, or, in the case of printed materials, contemporaneously with requesting the consumer's authorization;

(11) Offer of a "free" trial membership in the discount health care card program without disclosing clearly and conspicuously, and in close proximity to such representation, prior to requesting the consumer's authorization to be charged or billed for the offered trial membership, or contemporaneously with, in the case of printed materials:

(A) Any obligation of the consumer associated with accepting the offered trial membership, including, but not limited to, payment of shipping and handling fees, the obligation to purchase other goods or services, and the obligation to cancel membership or take other affirmative action to avoid incurring payment obligations and the manner in which such a cancellation request may be submitted;

(B) The number of payments (if more than one), and the amount of each payment, that will or may be required, and the circumstances under which additional payments may be required; and

(C) All conditions, limitations and restrictions on the ability of the consumer to use or cancel the offered trial membership; or

(12) Use of statements that the program operator, its marketers, or its discount health care card program is "approved," "licensed," "certified," or "endorsed" by the department, or any other similar statements that would imply approval or endorsement by the department. The program operator may state that it is "registered" with the department.

(c) The department may examine the marketing materials of the program operator or its marketers for compliance with this section and may require the program operator and its marketers to make corrections the department deems necessary.

§84.74. Responsibility of the Registrant--Records.

A program operator shall maintain all of its records kept in the ordinary course of business for a minimum of two years to be available for inspection by the department and such records shall include, but are not limited to, the following:

(1) a list of all adversarial proceedings in which the program operator has been named as a defendant, in this or any other state, that are pending or that have been disposed of since the registration or last renewal of the program operator's registration, including but not limited to the following:

(A) a list of all lawsuits identified by case style, cause number, jurisdiction, brief explanation of the dispute and the current status; and

(B) a list of all administrative proceedings identified by case style, cause number, agency or administrative body, jurisdiction, brief explanation of the dispute and current status;

(2) copies of the contracts with providers or provider networks;

(3) copies of the contracts with marketers currently under contract to market the discount health care card program;

(4) copies of all marketing material approved by the program operator for each marketer and documentation clearly indicating the date the material was approved by the program operator and the date such approval was provided to the marketer;

(5) a list of the requests for refunds from members that identifies the member by name, provides all contact information available for the member, and details the disposition of the request; and

(6) a list of the complaints made to the program operator that identifies the complainant by name, provides all contact information available for the complainant, specifies the nature of the complaint, and the details the disposition of the complaint.

§84.75. Responsibility of the Registrant--Reports.

(a) Within thirty days of the change, the program operator shall report in writing to the department any change to the name or business organization of the program operator that had been identified in the application or the renewal, or any subsequent amendments thereto.

(b) Every calendar month, a program operator shall provide to the department, in a manner prescribed by the executive director, all private label names being used for the discount health care card program.

(c) Every quarter of the calendar year, a program operator shall provide to the department, in a manner prescribed by the executive director, the following:

(1) the number of membership cards issued for the quarter;

(2) the total number of active membership cards, including those cards issued prior to the program operator's registration with the department;

(3) a list of the providers and provider networks currently under contract with the program operator for the discount health care card program, which may be accomplished by identification of an internet website that identifies such providers and networks;

(4) a list of the providers and provider networks previously providing health care services to members under the discount health care card program that are no longer participating in the discount health care card program;

(5) a list of marketers currently under contract to market the discount health care card program; and

(6) a list of the marketers previously marketing the discount health care card program that are no longer doing so.

§84.80. Fees.

(a) All fees paid to the department are non-refundable.

(b) The registration application fee is $1,000.

(c) The registration renewal application fee is $500.

(d) Duplicate registration fee is $25.

(e) Late renewal fees are assessed according to 16 TAC §60.83.

§84.90. Sanctions--Administrative Sanctions/Penalties.

(a) Grounds for denial of a registration application or renewal application include incomplete or falsified information.

(b) If a person violates any provision of Title 2, Subtitle C, Health and Safety, Chapter 76, any provision of Title 16, Texas Administrative Code, Chapter 84, or any provision of an order of the executive director or commission, proceedings may be instituted to impose administrative penalties, administrative sanctions, or both administrative penalties and sanctions in accordance with the provisions of Title 2, Subtitle C, Health and Safety, Chapter 76, and Texas Occupations Code, Chapter 51.

§84.91. Inspections and Investigations.

(a) The department may conduct inspections or investigations as necessary to enforce the provisions of the Act or this chapter.

(b) The department, during reasonable business hours, may:

(1) enter the business premises of a program operator or a person suspected of being in violation of the Act or a provision of this chapter; and

(2) examine and copy records pertinent to the inspection or investigation.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on October 15, 2007.

TRD-200704897
Brian E. Francis
Deputy Executive Director
Texas Department of Licensing and Regulation
Earliest possible date of adoption: November 25, 2007
For further information, please call: (512) 463-7348

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PART 8. TEXAS RACING COMMISSION

CHAPTER 303. GENERAL PROVISIONS
SUBCHAPTER A. ORGANIZATION OF THE COMMISSION

16 TAC §303.16

The Texas Racing Commission proposes an amendment to 16 TAC §303.16, which relates to historically underutilized businesses. The enactment of House Bill 3560 transferred from the Texas Building and Procurement Commission to the Comptroller of Public Accounts those powers and duties that relate to the historically underutilized businesses program. The rules were transferred and reorganized under Title 34, Chapter 20 of the *Texas Administrative Code.*

Charla Ann King, Executive Director for the Texas Racing Commission, has determined that for the first five year period the amendment is in effect there will be no fiscal implications for state or local government as a result of enforcing the amendment.

Ms. King has also determined that for each year of the first five years the amendment is in effect the anticipated public benefit will be that the Commission's rules will reflect the correct citation to the state's rules for historically underutilized businesses.

There is no anticipated economic cost to an individual required to comply with the proposed amendment.

There are no foreseeable implications relating to costs or revenues for small or micro-businesses as a result of enforcing or administering the proposed amendment.

There are no negative impacts upon employment conditions in this state as a result of the proposed amendment.

All comments or questions regarding the proposed amendment may be submitted in writing within 30 days following publication of this notice in the *Texas Register* to Gloria Giberson, Assistant to the Executive Secretary for the Texas Racing Commission, at P.O. Box 12080, Austin, Texas 78711-2080, telephone (512) 833-6699, or fax (512) 833-6907.

The amendment is proposed under the Texas Civil Statutes, Article 179e, §3.02, which authorizes the Commission to make rules relating exclusively to horse and greyhound racing.

The amendment implements Texas Civil Statutes, Article 179e.

§303.16. Historically Underutilized Businesses.

Pursuant to Government Code, §2161.003, the Commission adopts by reference the provisions of 34 TAC §20.11 et seq. [~~1 TAC §111.11 et seq.~~]

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on October 15, 2007.

TRD-200704895
Mark Fenner
General Counsel
Texas Racing Commission
Earliest possible date of adoption: November 25, 2007
For further information, please call: (512) 833-6699

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TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 153. SCHOOL DISTRICT PERSONNEL
SUBCHAPTER DD. CRIMINAL HISTORY RECORD INFORMATION REVIEW

19 TAC §§153.1101, 153.1103, 153.1105, 153.1107, 153.1109, 153.1111, 153.1113, 153.1115

The Texas Education Agency (TEA) proposes new §§153.1101, 153.1103, 153.1105, 153.1107, 153.1109, 153.1111, 153.1113, and 153.1115, concerning criminal history record information review. The proposed new sections would implement the requirements of the Texas Education Code (TEC), §§22.0832, 22.0833, 22.0836, 22.0837, and 22.085, which provide for national criminal history record information reviews of certain open-enrollment charter school employees, noncertified employees, and substitute teachers and authorize the commissioner of education to adopt rules for these reviews.

The TEC, §§22.0832, 22.0833, and 22.0836, added by SB 9, 80th Texas Legislature, 2007, require that the TEA conduct national criminal history record information reviews of certain open-

enrollment charter school employees, noncertified employees hired after January 1, 2008, and substitute teachers. The proposed new rules in 19 TAC Chapter 153, School Districts, Subchapter DD, Criminal History Record Information Review, would implement these requirements as follows.

In order to obtain the national criminal history record information, the proposed new rules would require certain open-enrollment charter school employees, noncertified employees hired after January 1, 2008, and substitute teachers to submit fingerprint and other identification information to the Department of Public Safety (DPS) in the form the DPS requires so that these persons' criminal history record information can be entered in the DPS Criminal History Clearinghouse.

The proposed new rules would require school districts, open-enrollment charter schools, and shared services arrangements to identify these persons and to assist in the collection of their fingerprint and identifying information in a way that ensures that their criminal history record information is submitted to the TEA and entered into the Clearinghouse. The proposed new rules would also authorize fees for such reviews, set standards regarding the criminal convictions, and establish a process for notifying persons that their criminal history record information disqualifies them from school employment under the standards of the TEC, §§22.0832, 22.0833, 22.0836, and 22.085.

The proposal would also define applicable words and terms; establish the purpose of the subchapter; address required assistance by school entities, private schools, and regional education service centers; and provide for an appeal of a TEA determination that would meet the standards of due process.

School districts would be required to report to the TEA the names of all noncertified employees after January 1, 2008, and ensure that those employees have submitted the information necessary for a national criminal history record review prior to beginning employment. School districts and charter schools would have to submit the names of their substitute teachers and charter school employees to whom the TEC, §12.1059, applies; assist the TEA in notifying their employees of their obligations under these rules; and terminate any such employees upon notice from the TEA that they have not submitted their national criminal history record information within 80 calendar days of notice from the TEA to do so. Each school year the superintendent or chief operating officer of a school entity would be required to certify to the TEA that the school entity has complied with discharging or refusing to hire an employee or applicant for employment if certain information is obtained through a criminal history record information review, as specified in the TEC, §22.085.

School districts and charter schools would only be required to maintain locally such documents as are necessary to establish their compliance with the proposed new rules.

Raymond Glynn, associate commissioner for educator quality and standards, has determined that for the first five-year period the new sections are in effect there will be fiscal implications for state government as a result of enforcing or administering the new sections. The estimated fiscal impact for the TEA of the proposed new rules for fiscal year 2008 is $580,520 in estimated additional costs, partially offset by an estimated increase in revenues of $429,000 (based on a $6 per person criminal history review fee). While it is estimated that $429,000 in revenues will continue to be generated over each year of fiscal years 2009-2012, it is estimated that costs in each of those years would be reduced to $391,020, so that total revenues over the next five fiscal years would be approximately equal to costs.

The total estimated cost of $580,520 for fiscal year 2008 includes estimated costs of $270,520 for personnel; $10,000 for travel; $40,000 for rent; $52,000 for other operating expenses; and $208,000 for initial software development. The total estimated cost of $391,020 for each year of fiscal years 2009-2012 includes the same estimated costs of $270,520 for personnel; $10,000 for travel; and $40,000 for rent. However, in each year of fiscal years 2009-2012, the estimated costs for other operating expenses and software would be reduced to $19,500 and $51,000, respectively.

There may be fiscal implications for local government. If local school districts elect to pay the costs for the submission of criminal history record information for their employees and applicants, any or all of that estimated $429,000 could be a cost to the local district. Additional costs not reflected in these estimates are, for each criminal history record, $39 paid to the DPS and $2 paid to the Department of Information Resources as an online transfer fee.

Dr. Glynn has determined that for each year of the first five years the new sections are in effect the public benefit anticipated as a result of enforcing the new sections will be obtaining national criminal history records on specified school employees, resulting in a safer school environment for both students and educators. There will be no effect on small businesses. There may be anticipated economic cost to persons who are required to comply with the new sections. The estimated total annual cost to the approximately 60,000 noncertified employee applicants, 10,000 substitute teachers, and 1,500 charter school staff who would be required to submit criminal history record information by these proposed rules is $429,000 per year in fees to the TEA. As previously noted, local school districts could elect to pay some or all of the costs for their employees and applicants.

The public comment period on the proposal begins October 26, 2007, and ends November 25, 2007. Comments on the proposal may be submitted to Cristina De La Fuente-Valadez, Policy Coordination Division, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701, (512) 475-1497. Comments may also be submitted electronically to *rules@tea.state.tx.us* or faxed to (512) 463-0028. All requests for a public hearing on the proposed new sections submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 15 calendar days after notice of the proposal has been published in the *Texas Register.*

The new sections are proposed under the Texas Education Code (TEC), §22.0832, which authorizes the TEA to review the national criminal history record information of an employee of an open-enrollment charter school to whom the TEC, §11.1059, applies and requires an open-enrollment charter school to provide the TEA with any information requested by the TEA for a complete review; TEC, §22.0833, which authorizes the commissioner to adopt rules necessary for the implementation of the national criminal history record information review of noncertified employees; TEC, §22.0836, which authorizes the commissioner to adopt rules necessary for the implementation of the national criminal history record information review of substitute teachers; TEC, §22.0837, which authorizes the TEA to by rule require a person submitting to a national criminal history record information review to pay a fee for the review in an amount not to exceed the amount of any fee imposed on an applicant for certification under the TEC, Chapter 21,

Subchapter B; TEC, §22.085, which requires superintendents of school districts and chief operating officers of open-enrollment charter schools to certify compliance to the TEA, and authorizes the State Board for Educator Certification, the administrative functions of which are provided by the TEA, to sanction certified educators who fail to comply with §22.085(a); and TEC, §12.1162, which requires the commissioner to adopt rules implementing additional sanctions for open-enrollment charter schools.

The new sections implement the Texas Education Code, §§22.0832, 22.0833, 22.0836, 22.0837, and 22.085, as added and amended by Senate Bill 9, 80th Texas Legislature, 2007, and TEC, §12.1162.

§153.1101. Definitions.

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Clearinghouse--The criminal history clearinghouse established by the Texas Department of Public Safety (DPS) pursuant to the Texas Government Code, §411.0845.

(2) Criminal history record information--In accordance with the Texas Government Code, §411.082(2), information collected about a person by the DPS, a law enforcement or a criminal justice agency, or a private entity governed by the Fair Credit Reporting Act (15 U.S.C. Section 1681 et seq.) that consists of identifiable descriptions and notations of arrests, detentions, indictments, informations, and other formal criminal charges and their dispositions. The term does not include fingerprint identification information.

(3) National criminal history record information--In accordance with the Texas Education Code, §22.081, criminal history record information obtained from both the DPS and the Federal Bureau of Investigation based on fingerprint identification information.

(4) School entity--A school district, open-enrollment charter school, or shared services arrangement.

(5) Substitute teacher--A teacher who is on call or on a list of approved substitutes to replace a regular teacher and has no regular or guaranteed hours. A substitute teacher may be certified or noncertified.

§153.1103. Purpose; Required Assistance.

(a) This subchapter provides rules for the implementation of the criminal history record information review of school entity employees required by the Texas Education Code, Chapter 22, Subchapter C, as amended by Senate Bill 9, 80th Texas Legislature, 2007.

(b) All school entities, private schools, and regional education service centers shall assist the Texas Education Agency in the collection of criminal history record information to facilitate this review.

§153.1105. Criminal History Record Information Review of Persons for Whom a National Criminal History Record Information Review is Not Required.

(a) A school district or an open-enrollment charter school shall obtain criminal history record information, as provided by the Texas Education Code (TEC), §22.083, on all employees who are not subject to a national criminal history record information review. Persons subject only to a criminal history record information review include, but are not limited to, noncertified administrative support personnel, school bus drivers, and custodial staff hired before January 1, 2008, and charter school employees not working in a position described in the TEC, §12.1059. As defined in §153.1101 of this title (relating to Definitions), the criminal history record information does not include fingerprint identification information.

(b) A shared services arrangement:

(1) shall obtain criminal history record information on all employees whose duties are performed on school property or at another location where students are regularly present; and

(2) may obtain the same information on all other employees.

(c) A regional education service center or a private school may obtain criminal history record information on:

(1) any of its employees or applicants for employment; and

(2) an employee or applicant for employment of a person or entity that contracts with the service center or private school if:

(A) the employee or applicant has or will have continuing duties related to the contracted services; and

(B) the employee or applicant has or will have direct contact with students.

§153.1107. Failure to Disclose Criminal Convictions.

An employee of a school entity, private school, or regional education service center may be discharged pursuant to the Texas Education Code, §22.085(d), if the employee fails to disclose information of the employee's conviction of a felony or a misdemeanor involving moral turpitude to the State Board for Educator Certification or to the school entity, private school, or regional education service center.

§153.1109. Noncertified Employees.

(a) National criminal history record information review.

(1) This section applies to a person described in the Texas Education Code (TEC), §22.0833, that is, any person who is not a holder of or applicant for Texas educator certification under the TEC, Chapter 21, Subchapter B, and who, after January 1, 2008, is offered employment by a school district or an open-enrollment charter school.

(2) This section also applies to such a person who is offered employment by a shared services arrangement, if the employee's or applicant's duties are or will be performed on school property or at another location where students are regularly present.

(3) Before being employed by a school entity, every person to whom this section applies shall submit fingerprint, photograph, and identification information to the Texas Department of Public Safety (DPS) as required by this section. All information shall be submitted in the form the DPS requires for the purpose of being included in the Clearinghouse.

(b) Submission of required information.

(1) In order that an applicant subject to national criminal history review may submit the required information, the school entity that intends to employ the applicant shall certify the pending employment to the Texas Education Agency (TEA). The TEA shall electronically provide the applicant or the school entity an authorization for submission of fingerprint, photograph, and identification information to the DPS in the form the DPS requires.

(2) Only fingerprint, photograph, and identification information that has been properly authorized by the TEA will be accepted by the DPS and included in the Clearinghouse as required by the TEC, §22.0833.

(c) Fees.

(1) The TEA's fee for review of national criminal history record information shall be the same as that required by the State Board for Educator Certification for such a review and may be collected by any entity authorized to obtain the information necessary for the review, which shall then remit TEA's portion of the fee to the TEA.

(2) A school entity may require an applicant for employment to pay all fees related to obtaining and reviewing the national criminal history record information required by this section.

(d) Employment pending review.

(1) A school entity shall ensure that a person subject to the TEC, §22.0833, submits the required information before that person's employment begins.

(2) After the required information is submitted, the person may begin employment, but that employment is conditional upon the review of that person's criminal history record information by the TEA pursuant to the TEC, §22.0833, and must be terminated if the TEA makes a determination that the employee or applicant is ineligible for employment under the terms of the TEC, §22.085.

(3) In the event that the school entity withdraws its offer of employment or terminates the employee under review, the school entity shall immediately notify the TEA, and no final determination of employability will be made.

(e) Notice of proposed determination of ineligibility for employment.

(1) The TEA shall notify the employee or applicant by certified mail, return receipt requested, if, based on its criminal history record information review, the TEA proposes to make a determination that an employee or applicant for employment is ineligible for employment under the terms of the TEC, §22.085.

(2) The notice shall specify the basis for the proposed determination, including, but not limited to, a description of the criminal charges or convictions involved.

(3) The notice shall state that the determination will be made unless the employee or applicant submits a written response to the TEA, which may include supporting documents or affidavits, within 15 calendar days from the date the notice was mailed, and such response demonstrates to the satisfaction of the TEA that the employee or applicant is eligible for employment under the terms of the TEC, §22.085.

(4) After review of such response, if any, the TEA shall notify the employee or applicant by certified mail, return receipt requested, of its determination and shall notify the school entity by e-mail.

(f) Other school entity obligations.

(1) A school entity shall discharge or refuse to hire an employee or applicant if the school entity obtains information through a criminal history record information review or by notification from the TEA pursuant to the TEC, §22.0833(g), that an employee or applicant for employment has been convicted of an offense covered by the TEC, §22.085.

(2) Pursuant to the TEC, §22.085(e), sanctions may be imposed on the certificate of a certified educator who fails to discharge an employee or fails to refuse to hire an applicant, if the educator knows or should have known that the employee or applicant has been convicted of an offense described in the TEC, §22.085(a).

(3) Each school year the superintendent or chief operating officer of a school entity shall certify to the TEA that the school entity has complied with the TEC, §22.085.

(4) The school entity shall cooperate with the TEA and DPS and its contractors to facilitate the submission of the required information, including assisting in the distribution of notices and authorization forms, if requested to do so by the TEA.

(g) Appeal of the TEA determination. An employee or applicant for employment may appeal the TEA determination that he or she is not eligible for employment pursuant to the TEC, §22.085, according to the procedures described in §153.1115 of this title (relating to Appeal of the TEA Determination), but the employee or applicant is not eligible for employment by a school entity unless the TEA determination is reversed by a final administrative order.

§153.1111. Substitute Teachers.

(a) National criminal history record information review.

(1) This section applies to a person described in the Texas Education Code (TEC), §22.0836, that is, a person who is a substitute teacher for a school entity or who is an applicant for a substitute teaching position.

(2) Every person to whom this section applies, and who has not previously done so, shall submit fingerprint, photograph, and identification information to the Texas Department of Public Safety (DPS) as required by this section. All information shall be submitted in the form the DPS requires for the purpose of being included in the Clearinghouse.

(b) Submission of required information.

(1) Upon notice from the Texas Education Agency (TEA), a school entity shall provide the TEA with the names, mailing addresses, and any other requested identifying information for all substitute teachers authorized to be employed by the school entity at that time.

(2) The school entity shall ensure that each such person shall obtain electronically from the TEA an authorization for submission of fingerprint, photograph, and identification information to the DPS in the form the DPS requires.

(3) The TEA shall notify the school entity and its substitute teachers of the schedule and deadline for the submission of all such information by substitute teachers employed by the school entity.

(4) This notice of the schedule and deadline shall specify the date, which shall be at least 80 calendar days from the date the notice is mailed, that the substitute teacher's national criminal history record information must be received by the TEA as required by this section and the TEC, §22.0836.

(5) A person who has not submitted the required information by the date specified in the notice shall not be eligible to serve as a substitute teacher for any school entity.

(6) Only fingerprint, photograph, and identification information that has been properly authorized by the TEA will be accepted by the DPS and included in the Clearinghouse as required by the TEC, §22.0836.

(c) Fees.

(1) The TEA's fee for review of national criminal history record information shall be the same as that required by the State Board for Educator Certification for such a review and may be collected by any entity authorized to obtain the information necessary for the review, which shall then remit the TEA's portion of the fee to the TEA.

(2) A school entity may require a substitute teacher to pay all fees related to obtaining and reviewing the national criminal history record information required by this section.

(d) Employment pending review.

(1) A school entity shall ensure that a person subject to the TEC, §22.0836, submits the required information before that person's employment begins.

(2) After the required information is submitted, the person may begin employment, but that employment is conditional upon the review of that person's criminal history record information by the TEA pursuant to the TEC, §22.0836, and must be terminated if the TEA makes a determination that the employee or applicant is ineligible for employment under the terms of the TEC, §22.085.

(3) In the event that the school entity withdraws its offer of employment or terminates the employee under review, the school entity shall immediately notify the TEA, and no final determination of employability will be made.

(e) Notice of proposed determination of ineligibility for employment.

(1) The TEA shall notify the substitute teacher by certified mail, return receipt requested, if, based on its criminal history record information review and/or its review of the substitute teacher's certification status, if any, the TEA proposes to make a determination that the substitute teacher is ineligible for such employment under the terms of the TEC, §22.0836 and §22.085.

(2) The notice shall specify the basis for the proposed determination, including, but not limited to, a description of the criminal charges or convictions involved and/or the educator certification status, if any, related to the determination.

(3) The notice shall state that the determination will be made unless the substitute teacher submits a written response to the TEA, which may include supporting documents or affidavits, within 15 calendar days from the date the notice was mailed, and such response demonstrates to the satisfaction of the TEA that the substitute teacher is eligible for employment as a substitute teacher under the terms of the TEC, §22.0836 and §22.085.

(4) After review of such response, if any, the TEA shall notify the substitute teacher by certified mail, return receipt requested, of its determination and shall notify the substitute teacher's school entity by e-mail.

(f) Other school entity obligations.

(1) A school entity shall discharge or refuse to hire an employee or applicant if the school entity obtains information through a criminal history record information review or by notification from the TEA pursuant to the TEC, §22.0836, that an employee or applicant for employment has been convicted of an offense covered by the TEC, §22.085, or that an employee or applicant is a certified educator whose certificate is currently revoked or suspended.

(2) Pursuant to the TEC, §22.085(e), sanctions may be imposed on the certificate of a certified educator who fails to discharge an employee or fails to refuse to hire an applicant, if the educator knows or should have known that the employee or applicant has been convicted of an offense described in the TEC, §22.085(a).

(3) Each school year the superintendent or chief operating officer of a school entity shall certify to the TEA that the school entity has complied with the TEC, §22.085.

(4) The school entity shall cooperate with the TEA and the DPS and its contractors to facilitate the submission of the required information, including assisting in the distribution of notices and authorization forms, if requested to do so by the TEA.

(g) Appeal of the TEA determination. A substitute teacher may appeal the TEA determination that he or she is not eligible for employment as a substitute teacher pursuant to the TEC, §22.0836 and §22.085, according to the procedures described in §153.1115 of this title (relating to Appeal of the TEA Determination), but the substitute teacher is not eligible for employment by a school entity as a substitute teacher unless the TEA determination is reversed by a final administrative order.

§153.1113. Charter School Educators.

(a) National criminal history record information review.

(1) This section applies to a person described in the Texas Education Code (TEC), §22.0832, that is, a person who is an employee or an applicant for employment with an open-enrollment charter school in a position to which the TEC, §12.1059, applies.

(2) Every person to whom this section applies, and who has not previously done so, shall submit fingerprint, photograph, and identification information to the Texas Department of Public Safety (DPS) as required by this section. All information shall be submitted in the form the DPS requires for the purpose of being included in the Clearinghouse.

(b) Submission of required information.

(1) Upon notice from the Texas Education Agency (TEA), an open-enrollment charter school shall provide the TEA with the names, mailing addresses, and any other requested identifying information for all employees and applicants to whom the TEC, §12.1059, applies.

(2) The charter school shall ensure that each such person shall obtain electronically from the TEA an authorization for submission of fingerprint, photograph, and identification information to the DPS in the form the DPS requires.

(3) The TEA shall notify the charter school and its employees to whom the TEC, §12.1059, applies of the schedule and deadline for the submission of all such information.

(4) This notice of the schedule and deadline shall specify the date, which shall be at least 80 calendar days from the date the notice is mailed, that the covered employee's national criminal history record information must be received by the TEA as required by this section and the TEC, §22.0832.

(5) A person who has not submitted the required information by the date specified in the notice shall not be eligible to serve in a position to which the TEC, §12.1059, applies.

(6) Only fingerprint, photograph, and identification information that has been properly authorized by the TEA will be accepted by the DPS and included in the Clearinghouse as required by the TEC, §22.0832.

(7) The following conditions are material violations of the school's charter, as provided by the TEC, §22.0832:

(A) failure of an open-enrollment charter school to provide the information required by this section; and

(B) continued employment by an open-enrollment charter school of a person in a position to which the TEC, §12.1059, applies, after receipt of notice from the TEA that the person has failed to submit the information required by this section.

(c) Fees.

(1) The TEA's fee for review of national criminal history record information shall be the same as that required by the State Board for Educator Certification (SBEC) for such a review and may be collected by any entity authorized to obtain the information necessary for the review, which shall then remit the TEA's portion of the fee to the TEA.

(2) An open-enrollment charter school may require an employee to whom the TEC, §12.1059, applies to pay all fees related to obtaining and reviewing the national criminal history record information required by this section.

(d) Employment pending review.

(1) An open-enrollment charter school shall ensure that a person subject to the TEC, §22.0832, submits the required information before that person's employment begins in a position to which the TEC, §12.1059, applies.

(2) After the required information is submitted, the person may begin employment, but that employment is conditional upon the review of that person's criminal history record information by the TEA pursuant to the TEC, §22.0832, and must be terminated if the TEA makes a determination that the employee or applicant is ineligible for employment under the terms of the TEC, §22.085.

(3) In the event that the open-enrollment charter school withdraws its offer of employment or terminates the employee under review, the school shall immediately notify the TEA, and no final determination of employability will be made.

(e) Standard of TEA review for charter school educators.

(1) As required by the TEC, §22.0832, the TEA shall review the criminal history record information of a person to whom that section applies to determine if that person would be eligible for certification under the TEC, Chapter 21, Subchapter B, and shall review the certification status, if any, of the person to determine if the person presents a danger to the health, safety, or welfare of the students, as defined by the TEC, §12.1162(b).

(2) The TEA shall determine that a person to whom this section applies would not be eligible for educator certification if that person's criminal history record information provides satisfactory evidence that the person would not be eligible for educator certification under the TEC, Chapter 21, Subchapter B, and Chapter 249 of this title (relating to Disciplinary Proceedings, Sanctions, and Contested Cases), where it is provided that certification may be denied if:

(A) the person has engaged in conduct that would constitute an offense directly relating to public education;

(B) the person lacks good moral character; or

(C) the person is unworthy to instruct or supervise the youth of this state.

(3) The TEA may rely on the rules and reported decisions of educator certification cases in its interpretation of the standards for educator certification. The TEA may also determine that a covered charter school educator would not be eligible for educator certification because the educator's revoked or suspended certification status, if any, demonstrates that the educator presents a danger to the health, safety, or welfare of the students, as defined by the TEC, §12.1162(b).

(f) Notice of proposed determination of ineligibility for employment.

(1) The TEA shall notify the charter school educator by certified mail, return receipt requested, if, based on its criminal history record information review, the TEA proposes to make a determination that the charter school educator is ineligible for such employment under the terms of the TEC, §§12.1162(b) and/or 22.0832 and 22.085.

(2) The notice shall specify the basis for the proposed determination, including, but not limited to, a description of the criminal charges or convictions and/or the educator certification status, if any, related to the determination.

(3) The notice shall state that the determination will be made unless the charter school educator submits a written response to the TEA, which may include supporting documents or affidavits, within 15 calendar days from the date the notice was mailed, and such response demonstrates to the satisfaction of the TEA that the charter school educator is eligible for employment as a charter school educator under the terms of the TEC, §§12.1162(b) and/or 22.0832 and 22.085.

(4) After review of such response, if any, the TEA shall notify the charter school educator by certified mail, return receipt requested, of its determination and shall notify the open-enrollment charter school by e-mail.

(g) Other charter school obligations.

(1) An open-enrollment charter school shall discharge or refuse to hire an employee or applicant for a position to which the TEC, §12.1059, applies if the charter school obtains information through a criminal history record information review or by notification from the TEA pursuant to the TEC, §22.0832, that:

(A) an employee or applicant has been determined to be ineligible for employment as a charter school educator pursuant to the TEC, §22.0832 and §22.085; or

(B) an employee or applicant has been determined to be ineligible for employment as a charter school educator pursuant to the TEC, §12.1162(b), because the employee or applicant is a certified educator whose certificate is currently revoked or suspended for reasons that indicate a danger to the health, safety, or welfare of students, as defined by the TEC, §12.1162(b).

(2) Pursuant to the TEC, §22.085(e), sanctions may be imposed on the certificate of a certified educator who fails to discharge an employee or fails to refuse to hire an applicant, if the educator knows or should have known that the employee or applicant has been convicted of an offense described in the TEC, §22.085(a).

(3) Each school year the chief operating officer of an open-enrollment charter school shall certify to the TEA that the school entity has complied with the TEC, §22.085.

(4) The charter school shall cooperate with the TEA and the DPS and its contractors to facilitate the submission of the required information, including assisting in the distribution of notices and authorization forms, if requested to do so by the TEA.

(5) The failure of an open-enrollment charter school to comply with a final determination under this section or to provide the information required by this section may be deemed a material violation of the school's charter.

(h) Appeal of the TEA determination. A charter school educator may appeal the TEA determination that he or she is not eligible for employment as a charter school educator pursuant to the TEC, §§12.1162(b) and/or 22.0832 and 22.085, according to the procedures in §153.1115 of this title (relating to Appeal of the TEA Determination), but the charter school educator is not eligible for employment in a position to which the TEC, §12.1059, applies unless the TEA determination is reversed by a final administrative order.

§153.1115. Appeal of the TEA Determination.

(a) Petition.

(1) A person may appeal the Texas Education Agency (TEA) determination of ineligibility for employment under the provisions specified in this paragraph by filing a petition with the TEA within 30 days of the date of mailing that determination. The appeal may be based on:

(A) Texas Education Code (TEC), §12.1162(b);

(B) TEC, §22.0832;

(C) TEC, §22.0833;

(D) TEC, §22.0836;

(E) §153.1109 of this title (relating to Noncertified Employees);

(F) §153.1111 of this title (relating to Substitute Teachers); and

(G) §153.1113 of this title (relating to Charter School Educators).

(2) The petition shall state the factual and legal basis for the appeal of the TEA determination. The petition shall comply with the State Office of Administrative Hearings (SOAH) procedural rule in Title 1, Part 7, Chapter 155, §155.29 (relating to Pleadings) and the requirements of a petition appealing a State Board for Educator Certification (SBEC) administrative denial of an application for educator certification under §249.12 of this title (relating to Administrative Denial; Appeal) and §249.26 of this title (relating to Petition).

(b) Contested case.

(1) Upon the receipt of a timely petition of appeal of a determination of ineligibility for employment, the TEA shall refer the appeal to the SOAH, where it will be considered a contested case subject to the same procedural rules, including the allocation of the burden of proof, that would apply to the appeal of an SBEC administrative denial of an application for educator certification.

(2) The commissioner of education or the commissioner's designee shall:

(A) review the administrative law judge's proposal for decision in such a contested case;

(B) enter a final administrative decision and order; and

(C) consider a motion for rehearing, if any.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on October 15, 2007.

TRD-200704869
Cristina De La Fuente-Valadez
Director, Policy Coordination
Texas Education Agency
Earliest possible date of adoption: November 25, 2007
For further information, please call: (512) 475-1497

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TITLE 22. EXAMINING BOARDS

PART 8. TEXAS APPRAISER LICENSING AND CERTIFICATION BOARD

CHAPTER 153. RULES RELATING TO PROVISIONS OF THE TEXAS APPRAISER LICENSING AND CERTIFICATION ACT

22 TAC §153.11

The Texas Appraiser Licensing and Certification Board (board) proposes an amendment to §153.11(b), concerning examinations. The proposed amendment to §153.11(b) adds language detailing the $125.00 fee associated with sitting for the state certified or licensed appraiser examination.

Troy Beaulieu, attorney for the Texas Appraiser Licensing and Certification Board, has determined that, for the first five-year period §153.11(b) is in effect, there will be no fiscal implications for the state as a result of enforcing or administering the amended section. There are no fiscal implications anticipated for local government, and there is no anticipated impact on local or state employment as a result of implementing the amended section as proposed.

Mr. Beaulieu also has determined that, for each year of the first five years the amendment is in effect, the anticipated public benefit as a result of this proposal is that the examination fee being modified by adoption of the amendment will facilitate administration of the examinations by a contracted, third-party contract exam provider on behalf of the Texas Appraiser Licensing and Certification Board. This will facilitate accomplishing the agency's statutory duties and obligations (i.e., licensing and regulating real estate appraisers). There will be a small effect on small businesses for §153.11(b), since appraisal service oriented businesses obviously are paying more to take the examination necessary to obtain a license or certification. There are obviously anticipated costs to persons who are required to comply with the section as proposed, namely, the increase in the examination fee.

Comments on the proposed amendment may be submitted to Troy Beaulieu, attorney for the Texas Appraiser Licensing and Certification Board, P.O. Box 12188, Austin, Texas 78711-2188.

The amendment is proposed under the Texas Appraiser Licensing and Certification Act, Subchapter D, Board Powers and Duties (Occupations Code, Chapter 1103), which provides the board with authority to adopt rules under §1103.151, Rules Relating to Certification and Licenses.

No other code, article, or statute is affected by this proposal.

§153.11. Examinations.

(a) (No change.)

(b) Each examination shall be consistent with the examination criteria and examination content outline of the Appraiser Qualifications Board (AQB) for the category of license or certification sought. Each applicant must achieve a passing score acceptable to the AQB on the examination to become licensed or certified. An applicant may file an application to take the examination on the form approved by the board or on a form required by the testing service under contract with the board. In either case, the applicant shall submit the $125.00 [~~appropriate~~] examination fee as instructed. The board shall require the contracted testing service to notify each person taking an examination whether the person has passed or failed the examination not later than

the 31st day after the examination date. If notification of the examination results will be delayed for more than 90 days after the examination date, the board shall notify each examinee of the reason for the delay not later than the 90th day after the examination date. The results of the examination are confidential.

(c) - (i) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on October 15, 2007.

TRD-200704891
Troy Beaulieu
Attorney
Texas Appraiser Licensing and Certification Board
Earliest possible date of adoption: November 25, 2007
For further information, please call: (512) 465-3959

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22 TAC §153.20

The Texas Appraiser Licensing and Certification Board (board) proposes an amendment to §153.20(f), concerning covert investigations. The proposed amendment to §153.20(f) adds language to provide an exception to the prohibition against conducting covert investigations so that the rule will conform with recent amendments made to the Texas Government Code and Penal Code under H.B. 716 that help address mortgage fraud.

Troy Beaulieu, attorney for the Texas Appraiser Licensing and Certification Board, has determined that, for the first five-year period §153.20(f) is in effect, there will be no fiscal implications for the state as a result of enforcing or administering §153.20(f) as amended. There are no fiscal implications anticipated for local government, and there is no anticipated impact on local or state employment as a result of implementing the amended section as proposed.

Mr. Beaulieu also has determined that, for each year of the first five years the proposed amendment is in effect, the anticipated public benefit as a result of this proposal is that the rule will conform to recent statutory changes made by the legislature with an eye towards investigating and prosecuting mortgage fraud. There will be no effect on small businesses, and there is no anticipated cost to persons who are required to comply with the amended section as proposed.

Comments on the proposed amendment may be submitted to Troy Beaulieu, attorney for the Texas Appraiser Licensing and Certification Board, P.O. Box 12188, Austin, Texas 78711-2188.

The amendment is proposed under the Texas Appraiser Licensing and Certification Act, Subchapter D, Board Powers and Duties (Occupations Code, Chapter 1103), which provides the board with authority to adopt rules under §1103.151, Rules Relating to Certification and Licenses and §1103.154, Rules Relating to Professional Conduct.

No other code, article, or statute is affected by this proposal.

§153.20. Guidelines for Revocations, Suspension of Denial of Licensure or Certification.

(a) - (e) (No change.)

(f) Except as provided by Tex. Gov. Code §402.031 (b) and Tex. Penal Code §32.32(d), [~~Notwithstanding any other provision of the Act,~~] there shall be no undercover or covert investigations conducted by authority of the Act.

(g) - (i) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on October 16, 2007.

TRD-200704909
Troy Beaulieu
Attorney
Texas Appraiser Licensing and Certification Board
Earliest possible date of adoption: November 25, 2007
For further information, please call: (512) 465-3959

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PART 23. TEXAS REAL ESTATE COMMISSION

CHAPTER 533. PRACTICE AND PROCEDURE

22 TAC §§533.1 - 533.8, 533.20, 533.30 - 533.37, 533.40

The Texas Real Estate Commission (TREC) proposes new rules to Chapter 533, concerning Practice and Procedure. The new rules are as follows: §533.1, concerning definitions of terms found in the chapter; §533.2, concerning the purpose and scope of the chapter; §533.3, concerning filing and notice procedures in a contested case; §533.4, concerning failure to answer, failure to attend a hearing and default; §533.5, concerning the adjudicative hearing record; §533.6, concerning filing of exceptions and replies; §533.7, concerning proposals for decision; §533.8, concerning final order, motions for rehearing, and emergency orders; §533.20, concerning informal proceedings; §533.30, concerning alternative dispute resolution (ADR) policy; §533.31, concerning referral of contested matters for ADR procedures; §533.32, concerning appointment of a mediator; §533.33, concerning qualifications of mediators; §533.34, concerning commencement of ADR; §533.35, concerning stipulations; §533.36 concerning agreements; §533.37, concerning confidentiality and §533.40, concerning negotiated rulemaking.

The new rules were adopted on an emergency basis on August 6, 2007, and published in the August 24, 2007, issue of the *Texas Register* (32 TexReg 5235).

The new rules are necessary in order to comply with legislation enacted during the 80th Legislative Session which transferred the functions of TREC's administrative law judge to the State Office of Administrative Hearings and which provided for a negotiated rulemaking process. Senate Bill 914 and House Bill 1530, each of which became effective September 1, 2007, included revisions to Texas Occupations Code, Chapters 1101, 1102, and 1303.

Loretta R. DeHay, General Counsel, has determined that for each year of the first five years that the rules are in effect there will be no fiscal implications for state or local governments as a result of enforcing or administering the rules, nor is there any anticipated impact on local or state employment.

Ms. DeHay also has determined that for each year of the first five years the rules as proposed are in effect the public benefit anticipated as a result of the proposed rules will be the consistent, fair and efficient administration of contested cases hearings through objective and well defined procedures and conduct of the rule-making process with ample provision for public participation by interested parties and those directly affected by rule proposals and that there is no probable economic cost to persons required to comply with the rules. There is no anticipated impact on small businesses, micro-businesses or local or state employment as a result of implementing the rules.

Comments on the proposal may be submitted to Loretta R. DeHay, General Counsel, Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188.

The new rules are proposed under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapters 1101 and 1102, and §1303.05, which authorizes the Commission to adopt and enforce rules necessary to administer Chapter 1303.

The statutes affected by the new rules are Texas Occupations Code, Chapters 1101, 1102, and 1303. No other statute, code, or article is affected by the proposed new rules.

§533.1. Definitions.

The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise.

(1) ADR--Alternative dispute resolution.

(2) ADR Administrator--The trained coordinator in the commission office designated by the commission to coordinate and oversee the ADR procedures which may include conducting mediations. The ADR Administrator shall serve as a resource for ADR training and shall collect data concerning the effectiveness of the ADR procedures.

(3) Administrator--The Administrator of the Texas Real Estate Commission.

(4) ALJ--Administrative law judge employed by the State Office of Administrative Hearings.

(5) Alternative Dispute Resolution (ADR) Procedures--Alternatives to judicial forums or administrative agency contested case proceedings for the voluntary settlement of contested matters through the facilitation of an impartial third-party.

(6) APA--The Administrative Procedure Act (Texas Government Code, Chapter 2001).

(7) Applicant--Any person seeking a license, certificate, registration, approval or permit from the commission.

(8) Commission--The Texas Real Estate Commission.

(9) Complainant--Any person who has filed a complaint with the commission against any person whose activities are subject to the jurisdiction of the commission.

(10) Contested case or proceeding--A proceeding in which the legal rights, duties, or privileges of a party are to be determined by the commission and/or administrator after an opportunity for adjudicative hearing.

(11) Final decision maker--The commission and/or the administrator, both of whom are authorized to render the final decision in a contested case.

(12) Judge--Administrative law judge employed by the State Office of Administrative Hearings.

(13) License--The whole or part of any commission registration, license, certificate, approval, permit, or similar form of permission required or permitted by law.

(14) Mediator--The commission employee or other state employee who presides over ADR proceedings regardless of which ADR method is utilized.

(15) Party--A person admitted to participate in a case before the final decision maker.

(16) Person--Any individual, partnership, corporation, or other legal entity, including a state agency or governmental subdivision.

(17) Pleading--A written document submitted by a party, or a person seeking to participate in a case as a party, which requests procedural or substantive relief, makes claims, alleges facts, makes legal argument, or otherwise addresses matters involved in the case.

(18) Private Mediator--A person in the mediation profession who is not a Texas State employee and who has met all the qualifications prescribed by Texas law for mediators.

(19) Respondent--Any person, licensed or unlicensed, who has been charged with violating a law establishing a regulatory program administered by the commission or a rule or order issued by the commission.

(20) Rule--Any commission statement of general applicability that implements, interprets, or prescribes law or policy, or describes the procedure or practice requirements of the commission and is filed with the Texas Register.

(21) SOAH--State Office of Administrative Hearings.

§533.2. Purpose and Scope.

(a) Purpose. Unless otherwise provided by statute or by the provisions of this subchapter, this subchapter will govern the institution and final conclusion of proceedings followed in handling all adjudicative matters under the APA. Once the commission files the Request to Docket Case form with SOAH, SOAH acquires jurisdiction over a contested case, and a hearing conducted by SOAH on a contested case proceeding pending before the commission is governed by SOAH's rules of procedure. In the case of a conflict with rules in this chapter, SOAH's rules, 1 TAC Chapter 155, control after the filing of the Request to Docket Case form and until after final amendments or corrections to the proposal for decision.

(b) Scope. These rules govern the institution, conduct, and determination of adjudicative proceedings required or permitted by law, whether instituted by the commission or by the filing of an application, claim, complaint, or any other pleading. These rules shall not be construed so as to enlarge, diminish, modify, or otherwise alter the jurisdiction, powers, or authority of the commission, the administrator, or the substantive rights of any person or agency.

§533.3. Filing and Notice.

(a) The commission shall provide notice to all parties in accordance with the APA §2001.052, Chapters 1101 and 1102, Texas Occupations Code, and the following:

(1) If, after investigation of a possible violation and the facts surrounding that possible violation, the commission determines that a violation has occurred, the commission shall issue a written Notice of Alleged Violation.

(2) The Notice of Alleged Violation shall include:

(A) a brief summary of the alleged violation(s);

(B) a statement of the amount of the penalty and/or sanction recommended; and

(C) a statement of the right of the Respondent to a hearing.

(3) The commission shall base the recommendation on the factors set forth in this chapter.

(b) Not later than the 20th day after the date on which the notice is received, the Respondent may accept the determination of the commission, including the recommended penalty and/or sanction, or make a written request for a hearing on that determination.

(c) Upon receipt of a written request for hearing, the commission shall submit a Request for Docket Case form to SOAH accompanied by legible copies of all pertinent documents, including but not limited to the Notice of Hearing or other document describing the agency action giving rise to a contested case. In accordance with 1 TAC §155.9, the commission shall request one or more of the following actions on the Request to Docket Case form:

(1) Setting of hearing;

(2) Assignment of an administrative law judge; and/or

(3) Setting of alternative dispute resolution proceeding, including but not limited to mediated settlement conference, mediation, or arbitration.

(d) The original of all pleadings and other documents requesting action or relief in a contested case, shall be filed with SOAH once it acquires jurisdiction. Pleadings, other documents, and service to SOAH shall be directed to: Docketing Division, State Office of Administrative Hearings, 300 West 15th Street, Room 504, P.O. Box 13025, Austin, Texas 78711-3025. The time and date of filing shall be determined by the file stamp affixed by SOAH. Unless otherwise ordered by the judge, only the original and no additional copies of any pleading or document shall be filed. Unless otherwise provided by law, after a proposal for decision has been issued, originals of documents requesting relief, such as exceptions to the proposal for decision or requests to reopen the hearing, shall be filed with the commission's administrator and/or commission as well as the commission's Enforcement Division, P.O. Box 12188, Austin, Texas 78711; 1101 Camino La Costa, Austin Texas; or by facsimile mail at (512) 465-3962 if the documents contain 20 or fewer pages including exhibits. Filings may be made until 5:00 p.m. on business days. Copies shall be filed with SOAH.

(e) If a real estate salesperson is a respondent, the commission also will notify the salesperson's sponsoring broker of the hearing. If an apprentice inspector or real estate inspector is a respondent, the commission also will notify the sponsoring professional inspector of the hearing.

(f) Any document served upon a party is prima facie evidence of receipt if it is directed to the party's last known complete, correct address as shown by the commission's records. This presumption is rebuttable. Failure to claim properly addressed certified or registered mail will not support a finding of nondelivery.

§533.4. Failure to Answer, Failure to Attend Hearing and Default.

(a) If, within twenty days after receiving a Notice of Alleged Violation, the Respondent fails to accept the commission's determination and recommended administrative penalty and/or sanction, or fails to make a written request for a hearing on the determination, the commission shall enter a default order against the Respondent, containing findings of fact and conclusions of law.

(b) After receiving a notice proposing disapproval of an application an Applicant may request a hearing in writing within twenty days of receipt of the notice or forfeit the right to a hearing unless otherwise provided by applicable law.

(c) The commission may delegate to the administrator the commission's authority to act under Texas Occupations Code §1101.704(b) and subsection (a) of this section.

(d) 1 TAC §155.55 (SOAH rules) applies where a Respondent fails to appear on the day and time set for administrative hearing. In that case, the commission's staff may move either for dismissal of the case from SOAH's docket or for the issuance of a default proposal for decision by the judge.

§533.5. The Adjudicative Hearing Record.

(a) On the written request by a party to a case or on request of the judge, a written transcript of all or part of the proceedings shall be prepared. The cost of the transcript is borne by the requesting party. This section does not preclude the parties from agreeing to share the costs associated with the preparation of a transcript. If only the judge requests a transcript, costs will be assessed to the Respondent(s) or Applicant(s), as appropriate.

(b) Any party who needs a certified language interpreter for presentation of its case shall be responsible for requesting the services of an interpreter. The requesting party shall be responsible for making arrangements with a certified language interpreter once a request is made. The cost of the certified language interpreter shall be borne by the party requiring the interpreter's services.

§533.6. Filing of Exceptions and Replies.

(a) Any party of record who is adversely affected by the proposal for decision of the judge shall have the opportunity to file exceptions and a brief to the proposal for decision within 15 days after the date of service of the proposal for decision.

(b) A reply to the exceptions may be filed by the other party within 15 days of the filing of the exceptions.

(c) Exceptions and replies shall be filed with the judge with copies served on the opposing party. The proposal for decision may be amended by the judge pursuant to the exceptions, replies, or briefs submitted by the parties without again being served on the parties.

§533.7. Proposals for Decision.

(a) Proposed decisions shall be brought before the commission for final decision.

(b) The proposal for decision may be acted on by the commission after the expiration of 10 days after the filing of replies to exceptions to the proposal for decision or upon the day following the day exceptions or replies to exceptions are due if no such exceptions or replies are filed.

(c) It is the policy of the commission to change a finding of fact or conclusion of law in a proposal for decision or to vacate or modify the proposed order of a judge when, the commission determines:

(1) that the judge did not properly apply or interpret applicable law, agency rules, written policies provided by staff or prior administrative decisions;

(2) that a prior administrative decision on which the judge relied is incorrect or should be changed; or

(3) that a technical error in a finding of fact should be changed.

§533.8. Final Orders, Motions for Rehearing, and Emergency Orders.

(a) Unless otherwise authorized under §533.13(f) of this chapter, a final order in a contested case shall be in writing and shall be signed by the presiding officer of the commission. Final orders shall include findings of fact and conclusions of law separately stated.

(b) If the commission modifies, amends, or changes a proposal for decision, the order shall reflect the commissions changes as stated in the record of the meeting and state the specific reason and legal basis for the changes made according to §533.7(c) of this chapter.

(c) A party notified by mail of a final decision or order shall be presumed to have been notified on the third day after the date on which the notice is mailed.

(d) The timely filing of a motion for rehearing is a prerequisite to appeal.

(e) Motions for rehearing are controlled by Texas Government Code §2001.145 and §2001.146.

(f) If the commission and/or the administrator find that an imminent peril to the public health, safety, or welfare requires immediate effect of a final decision or order, that finding shall be recited in the decision or order as well as the fact that the decision or order is final and effective on the date signed, in which event the decision or order is final and appealable on the date signed and no motion for rehearing is required as a prerequisite for appeal.

(g) A petition for judicial review must be filed in a District Court of Travis County Texas within 30 days after the order is final and appealable, as provided by Texas Government Code, Title 10, Subtitle A, Chapter 2001. A party filing a petition for judicial review must also comply with the requirements of Texas Occupations Code, §1101.707.

(h) If, after judicial review, the penalty is reduced or not assessed, the administrator shall remit to the person charged the appropriate amount, plus accrued interest if the penalty has been paid, or shall execute a release of the bond if a supersedeas bond has been posted. The accrued interest on amounts remitted by the administrator under this subsection shall be paid at a rate equal to the rate charged on loans to depository institutions by the New York Federal Reserve Bank, and shall be paid for the period beginning on the date that the assessed penalty is paid to the commission and ending on the date the penalty is remitted.

§533.20. Informal Proceedings.

(a) Informal disposition of any contested case involving a licensee or an applicant for licensure may be made through an informal conference pursuant to Texas Occupations Code §1101.660.

(b) The commission and the respondent or applicant may enter into an agreed order without first engaging in an informal conference under this subchapter.

(c) A licensee or applicant may request an informal conference; however, the decision to hold a conference shall be made by the Director of Enforcement.

(d) An informal conference shall be voluntary and shall not be a prerequisite to a formal hearing.

(e) An informal conference may be conducted in person, or by electronic, telephonic, or written communication.

(f) The Director of Enforcement or the director's designee shall decide upon the time, date and place of the informal conference, and provide written notice to the licensee or applicant. Notice shall be provided by certified mail no less than ten days prior to the date of the conference to the permanent mailing address of the licensee or applicant. The ten days shall begin on the date of mailing. The licensee or applicant may waive the ten-day notice requirement.

(g) A copy of the commission's rules concerning informal conferences shall be enclosed with the notice of the informal conference. The notice shall inform the licensee or applicant of the following:

(1) that the licensee or applicant may be represented by legal counsel;

(2) that the licensee or applicant may offer documentary evidence as may be appropriate;

(3) that at least one public member of the commission shall be present;

(4) that two staff members, including the staff attorney assigned to the case, with experience in the regulatory area that is the subject of the proceedings shall be present;

(5) that the licensee's or applicant's attendance and participation is voluntary; and

(6) that the complainant involved in the alleged violations may be present.

(h) The notice of the informal conference shall be sent to the complainant at his or her last known address. The complainant shall be informed that he or she may appear in person or may submit a written statement for consideration at the informal conference.

(i) The conference shall be informal and need not follow the procedures established in this chapter for contested cases and formal hearings.

(j) The licensee or applicant, the licensee's or applicant's attorney, the commission member, and the staff attorney may question the respondent or complainant, make relevant statements, present statements of persons not in attendance, and present such other evidence as may be appropriate.

(k) The staff attorney assigned to the case shall attend each informal conference. The commission member or other staff member may call upon the attorney at any time for assistance in the informal conference.

(l) No formal record of the proceedings of the informal conference shall be made or maintained.

(m) The complainant may be excluded from the informal conference except during the complainant's oral presentation. The licensee or applicant, the licensee's or applicant's attorney, and commission staff may remain for all portions of the informal conference, except for consultation between the commission member and commission staff.

(n) The complainant shall not be considered a party in the informal conference but shall be given the opportunity to be heard if the complainant attends. Any written statement submitted by the complainant shall be reviewed at the conference.

(o) At the conclusion of the informal conference, the commission member or staff attorney may propose an informal settlement of the contested case. The proposed settlement may include administrative penalties or any disciplinary action authorized by the Act. The commission member or staff attorney may also recommend that no further action be taken.

(p) The licensee or applicant may either accept or reject the settlement recommendations at the conference. If the recommendations are accepted, an agreed order shall be prepared by the staff attorney and forwarded to the licensee or applicant. The order shall contain agreed findings of fact and conclusions of law. The licensee or applicant shall execute the order and return the signed order to the commission within ten days of his or her receipt of the proposed agreed order. If the licensee or applicant fails to return the signed order within the

stated time period, the inaction shall constitute rejection of the settlement recommendation.

(q) If the licensee or applicant rejects the proposed settlement, the matter shall be referred to the Director of Enforcement for appropriate action.

(r) If the licensee or applicant signs and accepts the recommendation, the agreed order shall be submitted to the administrator for approval.

(s) If the administrator does not approve a proposed agreed order, the licensee or applicant shall be so informed and the matter shall be referred to the Director of Enforcement for other appropriate action.

(t) A licensee's opportunity for an informal conference under this subchapter shall satisfy the requirement of the APA, §2001.054(c).

(u) The commission may order a license holder to pay a refund to a consumer as provided in an agreement resulting from an informal conference instead of or in addition to imposing an administrative penalty. The amount of a refund ordered as provided in an agreement resulting from an informal conference may not exceed the amount the consumer paid to the license holder for a service regulated by the Act and this title. The commission may not require payment of other damages or estimate harm in a refund order.

§533.30. Alternative Dispute Resolution Policy.

It is the commission's policy to encourage the fair and expeditious resolution of all contested matters through voluntary settlement procedures. The commission is committed to working with all parties to achieve early settlement of contested matters.

§533.31. Referral of Contested Matter for Alternative Dispute Resolution Procedures.

The commission's Director of Enforcement or Human Resources Office, on behalf of the commission, may seek to resolve a contested matter through negotiation or mediation involving all parties and if so, shall refer the matter for mediation in accordance with §533.34 of this chapter (relating to Commencement of ADR).

§533.32. Appointment of Mediator.

(a) For each matter referred for ADR procedures, the ADR Administrator shall mediate or assign another commission mediator unless the parties agree upon the use of another agency's mediator or private mediator. The ADR Administrator may assign a substitute or additional mediator to a proceeding as the ADR Administrator deems necessary.

(b) A private mediator may be hired for commission ADR procedures provided that:

(1) the parties unanimously agree to use a private mediator;

(2) the parties unanimously agree to the selection of the person to serve as the mediator; and

(3) the mediator agrees to be subject to the direction of the commission's ADR Administrator and to all time limits imposed by the Administrator, statute or regulation.

(c) If a private mediator is used, the costs for the services of the mediator shall be apportioned equally among the parties, unless otherwise agreed upon by the parties, and shall be paid directly to the mediator.

(d) All mediators in commission mediation proceedings shall subscribe to the ethical guidelines for mediators adopted by the ADR Section of the State Bar of Texas.

§533.33. Qualifications of Mediators.

(a) A commission mediator will receive at a minimum 40 hours of formal training in ADR procedures through a program approved by the commission's administrator.

(b) SOAH mediators, employees of other agencies who are mediators, and private pro bono mediators, may be assigned to contested matters as needed.

(1) Each mediator shall first have received 40 hours of Texas mediation training as prescribed by Texas law.

(2) Each mediator shall have some expertise in the area of the contested matter.

(3) If the mediator is a SOAH judge, that person will not also sit as the judge for the case if the contested matter goes to public hearing. If the mediator is an employee of the commission and dispute does not settle, that mediator will not have any further contact or involvement concerning the disputed matter.

§533.34. Commencement of ADR.

(a) The commission encourages resolution of disputes at any time; however, ADR procedures may begin, at the discretion of the Director of Enforcement or the Human Resources Office, anytime after the commission anticipates initiation of an adverse action against an applicant, respondent, or employee. The commission may issue a Notice of Mediation along with a Notice of Alleged Violation or along with a notice of a proposed denial of licensure or opportunity to take an examination. Prior to the submission of a Request for Docket Case form to SOAH, and with agreement of all parties, the ADR Administrator may schedule mediation upon any party's request.

(b) A commission employee, subsequent to appealing a personnel action to the appropriate commission Division Director in accordance with the commission's Personnel Manual and without having obtained satisfaction, may request approval of mediation from the Human Resources Office.

(c) Upon unanimous motion of the parties and at the discretion of the administrative law judge, the provisions of this section may apply to contested case hearings. In such cases, it is within the discretion of the judge to continue the hearing to allow the use of ADR procedures.

§533.35. Stipulations.

When the ADR procedures do not result in the full settlement of a matter, the parties in conjunction with the mediator, may limit the contested issues through the entry of written stipulations. Such stipulations shall be forwarded or formally presented to the administrative law judge assigned to conduct the contested case hearing on the merits and shall be made part of the hearing record.

§533.36. Agreements.

All agreements between or among parties that are reached as a result of ADR must be committed to writing and will have the same force and effect as a written contract.

§533.37. Confidentiality.

(a) Except as provided in subsections (c) and (d) of this section, a communication relating to the subject matter made by a participant in an ADR procedure, whether before or after the institution of formal ADR proceedings, is confidential, is not subject to disclosure, and may not be used as evidence in any further proceeding.

(b) Any notes or record made of an ADR procedure are confidential, and participants, including the mediator, may not be required to testify in any proceedings relating to or arising out of the matter in dispute or be subject to process requiring disclosure of confidential information or data relating to or arising out of the matter in dispute.

(c) An oral communication or written material used in or made a part of an ADR procedure is admissible or discoverable only if it is admissible or discoverable independent of the procedure.

(d) If this section conflicts with other legal requirements for disclosure of communications or materials, the issue of confidentiality may be presented to the judge to determine, in camera, whether the facts, circumstances, and context of the communications or materials sought to be disclosed warrant a protective order or whether the communications or materials are subject to disclosure.

(e) All communications in the mediation between parties and between each party and the mediator are confidential. No shared information will be given to the other party unless the party sharing the information explicitly gives the mediator permission to do so. Material provided to the mediator will not be provided to other parties and will not be filed or become part of the contested case record. All notes taken during the mediation conference will be destroyed at the end of the process.

§533.40. Negotiated Rulemaking.

(a) It is the commission's policy to employ negotiated rulemaking procedures when appropriate. When the commission is of the opinion that proposed rules are likely to be complex, or controversial, or to affect disparate groups, negotiated rulemaking will be considered.

(b) When negotiated rulemaking is to be considered, the commission will appoint a convener to assist it in determining whether it is advisable to proceed. The convener shall have the duties described in Texas Government Code, Chapter 2008, and shall make a recommendation to the administrator to proceed or to defer negotiated rulemaking. The recommendation shall be made after the convener, at a minimum, has considered all of the items enumerated in Texas Government Code, §2008.052(c).

(c) Upon the convener's recommendation to proceed, the commission shall initiate negotiated rulemaking according to the provisions of Texas Government Code, Chapter 2008.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on October 15, 2007.

TRD-200704881
Loretta R. DeHay
General Counsel and Assistant Administrator
Texas Real Estate Commission
Earliest possible date of adoption: November 25, 2007
For further information, please call: (512) 465-3900

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22 TAC §§533.31 - 533.39

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Real Estate Commission or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Texas Real Estate Commission (TREC) proposes to repeal existing provisions of Chapter 533 concerning Practice and Procedure, specifically §§533.31 - 533.39. New rules are being simultaneously proposed to replace the existing rules.

The repeal is necessary because the existing rules conflict with the new rules, which are being proposed in order to comply with legislation enacted during the 80th Legislative Session which transferred the functions of TREC's administrative law judge to the State Office of Administrative Hearings. The repeals were adopted on an emergency basis on August 6, 2007, and published in the August 24, 2007, issue of the *Texas Register* (32 TexReg 5239).

Senate Bill 914 and House Bill 1530, each of which became effective September 1, 2007, included revisions to Texas Occupations Code, Chapters 1101, 1102, and 1303.

Loretta R. DeHay, General Counsel, has determined that for the first five-year period the repeal is in effect there will be no fiscal implications for state or local governments as a result of repealing the rules, nor is there any anticipated impact on local or state employment.

Ms. DeHay also has determined that for each year of the first five years the repeal as proposed is in effect the public benefit anticipated will be the consistent, fair and efficient administration of hearings in contested case. There is no anticipated impact on small businesses, micro-businesses or local or state employment as a result of implementing the sections.

Comments on the proposed repeal may be submitted to Loretta R. DeHay, General Counsel, Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188.

The repeal is proposed under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapters 1101 and 1102, and under §1303.05, which authorizes the Commission to adopt and enforce rules necessary to administer Chapter 1303.

The statutes affected by this repeal are Texas Occupations Code, Chapters 1101, 1102, and 1303. No other statute, code, or article is affected by the proposed repeal.

§533.31. Procedures for Rulemaking and Contested Cases.

§533.32. Filing of Documents.

§533.33. Computation of Time.

§533.34. Disapproval of an Application for a License or Registration.

§533.35. Revocation or Other Action against a License or Registration.

§533.36. Hearings before Presiding Officer or the Members of the Commission.

§533.37. Limitations on Number of Witnesses.

§533.38. Motions for Rehearing, Modification of Order, or Probation.

§533.39. Judicial Review.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on October 15, 2007.

TRD-200704880
Loretta R. DeHay
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Texas Real Estate Commission
Earliest possible date of adoption: November 25, 2007
For further information, please call: (512) 465-3900

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CHAPTER 535. GENERAL PROVISIONS
SUBCHAPTER D. THE COMMISSION

22 TAC §535.42

The Texas Real Estate Commission (TREC) proposes an amendment to §535.42, concerning Jurisdiction and Authority.

The amendment was adopted on an emergency basis on August 6, 2007, and published in the August 24, 2007, issue of the *Texas Register* (32 TexReg 5240).

The amendment deletes a reference to an employee of TREC conducting contested case hearings.

The amendment is necessary in order to comply with legislation enacted during the 80th Legislative Session which transferred the functions of TREC's administrative law judge to the State Office of Administrative Hearings. Senate Bill 914 and House Bill 1530, each of which became effective September 1, 2007, included revisions to Texas Occupations Code, Chapters 1101,1102, and 1303.

Loretta R. DeHay, General Counsel, has determined that for each year of the first five years that the rule is in effect there will be no fiscal implications for state or local governments as a result of enforcing or administering the rule, nor is there any anticipated impact on local or state employment.

Ms. DeHay also has determined that for each year of the first five years the amendment as proposed is in effect the public benefit anticipated as a result of the proposed rule will be the consistent, fair and efficient administration of hearings in contested cases and that there is no probable economic cost to persons required to comply with the rule. There is no anticipated impact on small businesses, micro-businesses or local or state employment as a result of implementing the rule.

Comments on the proposal may be submitted to Loretta R. DeHay, General Counsel, Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188.

The amendment is proposed under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapters 1101 and 1102, and §1303.05, which authorizes the Commission to adopt and enforce rules necessary to administer Chapter 1303.

The statutes affected by the proposed amendment are Texas Occupations Code, Chapters 1101, 1102, and 1303. No other statute, code, or article is affected by the proposed amendment.

§535.42. Jurisdiction and Authority.

[~~(a)~~] The commission does not mediate disputes between or among licensees concerning entitlement to sales commissions or recommend individual licensees to the public.

[~~(b) An employee of the commission specifically authorized by it pursuant to Texas Occupations Code, Chapter 1101, (the Act), §1101.151(b)(3), to conduct hearings and render final decisions in contested cases may order issuance of a probationary license under §535.94 of this title (relating to Hearing on Application Disapproval: Probationary Licenses) and may suspend or revoke a license or reprimand or place on probation a licensee for a violation of the Act or a rule of the commission.~~]

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on October 15, 2007.

TRD-200704879
Loretta R. DeHay
General Counsel and Assistant Administrator
Texas Real Estate Commission
Earliest possible date of adoption: November 25, 2007
For further information, please call: (512) 465-3900

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SUBCHAPTER E. REQUIREMENTS FOR LICENSURE

22 TAC §535.51

The Texas Real Estate Commission (TREC) proposes amendments to §535.51, concerning General Requirements and proposes to adopt by reference six revised forms. The amendments are proposed to comply with new legislation that included revisions to Texas Occupations Code Chapters 1101 and 1102 enacted during the 80 Legislative Session, Regular Session, by Senate Bill 914 and House Bill 1530. The effective date of SB 914 and HB 1530 is September 1, 2007.

Several of the amendments to the rule were adopted on an emergency basis on August 6, 2007, to comply with the effective date of the legislation. The amendments propose to permanently adopt by reference the six revised forms to reflect late renewal penalties for applicants for salesperson and broker licenses required by the above-mentioned bill and to reflect an increased application fee for salesperson applicants which was proposed by TREC and published in the August 24, 2007, issue of the *Texas Register* (32 TexReg 5240). The proposed amendments also provide that an applicant for a real estate salesperson or broker license must provide fingerprints to the Department of Public Safety within six months of the date of the application for a license or the application will be considered void and no longer subject to further evaluation.

Loretta R. DeHay, General Counsel, has determined that for the first five-year period the sections are in effect there will be no fiscal implications for state or local governments as a result of enforcing or administering the sections. There is no anticipated impact on small businesses, micro-businesses or local or state employment as a result of implementing the sections.

Ms. DeHay also has determined that for each year of the first five years the sections as proposed are in effect the public benefit anticipated as a result of enforcing the sections will be compliance with statutory requirements regarding late renewal fees and fingerprinting requirements. There will be no effect on small businesses. There is an anticipated economic cost to persons who are required to comply with the proposed fingerprinting requirements. The fingerprinting fee will be $44.95; this is the fee that the Department of Public Safety and the Federal Bureau of Investigations charge to take the fingerprints and conduct the criminal history background check required by law.

Comments on the proposal may be submitted to Loretta R. DeHay, General Counsel, Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188.

The amendments are proposed under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to make and enforce all rules and regulations necessary for the performance of its duties and to establish standards of conduct and ethics for its licensees in keeping with the purpose and intent of the Act to insure compliance with the provisions of the Act.

The statutes affected by the proposed amendments are Texas Occupations Code, Chapters 1101 and 1102, and Senate Bill 914, and House Bill 1530, 80th Legislature, R.S. No other statute, code or article is affected by the proposed amendments.

§535.51. General Requirements.

(a) - (c) (No change.)

(d) An application is considered void and is subject to no further evaluation or processing when one of the following events occurs:

(1) - (2) (No change.)

(3) the applicant, having satisfied any examination requirement, fails to provide information or documentation within sixty (60) days after the commission makes written request for correct or additional information or documentation;[.]

(4) the applicant fails to provide fingerprints to the Department of Public Safety within six months from the date the application is filed.

(e) The commission adopts by reference the following forms approved by the commission which are published by and available from the Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188:

(1) Application [~~Effective June 1, 2004, application~~] for a Real Estate Broker License, TREC Form BL-8;

(2) Application [~~Effective September 1, 2004, Application~~] for a Real Estate Broker License by a Corporation, TREC Form BLC-5;

(3) Effective September 1, 2007, Application [~~Effective September 1, 2004, application~~] for Late Renewal of A Real Estate Broker License, TREC Form BLR-8 [~~7~~];

(4) Effective September 1, 2007, Application for Late Renewal of Real Estate Broker License [~~Privileges~~] by a Corporation, TREC Form BLRC-5 [~~4~~];

(5) Effective November 1, 2007, Application for Real Estate Salesperson License, TREC Form SL-11 [~~10~~];

(6) Effective September 1, 2007, Application for Late Renewal of Real Estate Salesperson License, TREC Form SLR-9 [~~8~~];

(7) - (8) (No change.)

(9) Effective November 1, 2007, Application of Currently Licensed Real Estate Broker for Salesperson License, TREC Form BSL-6 [~~5~~]; and

(10) Effective September 1, 2007, Application for Late Renewal of a Real Estate Broker License by a Limited Liability Company, TREC Form BLRLLC-4 [~~3~~].

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on October 15, 2007.

TRD-200704878

Loretta R. DeHay
General Counsel and Assistant Administrator
Texas Real Estate Commission
Earliest possible date of adoption: November 25, 2007
For further information, please call: (512) 465-3900

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SUBCHAPTER F. EDUCATION, EXPERIENCE, EDUCATIONAL PROGRAMS, TIME PERIODS AND TYPE OF LICENSE

22 TAC §§535.61 - 535.65

The Texas Real Estate Commission (TREC) proposes amendments to §535.61, concerning Examinations, §535.62, concerning Acceptable Courses of Study, §535.63, concerning Education and Experience Requirements for a License, §535.64, concerning Accreditation of Schools and Approval of Courses and Instructors, and §535.65, concerning Changes in Ownership or Operation of Schools Presentation of Courses, Advertising, and Records.

The amendments to §§535.61, 535.63, 535.64 and 535.65 are proposed to comply with new legislation that included revisions to Texas Occupations Code Chapter 1101 enacted during the 80 Legislative Session, Regular Session, by Senate Bill 914 and House Bill 1530. The amendments to §535.61 and §535.63 clarify that new Texas Occupations Code §1101.451(f) regarding late renewals does not apply to education and experience waivers authorized by rule under Texas Occupations Code §1101.362. Sections 535.61 and 535.63 were adopted by TREC on an emergency basis on August 6, 2007, to comply with the effective date of the legislation. The rules were published in the August 24, 2007, issue of the *Texas Register* (32 TexReg 5241).

The amendments to §535.64 and §535.65 change references concerning the education provider bond from $10,000 to $20,000, and adopt by reference a revised bond form reflecting the increased amount as required by the new law.

The amendments to §535.62 provides that all TREC core courses that are offered by an alternative delivery method must be certified by a distance learning certification center that is acceptable by the commission, such as the International Distance Education Certification Center (IDECC). Commission staff would continue to review the courses for content, but IDECC or a similarly approved center would evaluate the courses for appropriate design and delivery, including whether the course teaches mastery.

Loretta R. DeHay, General Counsel, has determined that for the first five-year period the sections are in effect there will be no fiscal implications for state or units of local government as a result of enforcing or administering the sections. There is no anticipated impact on small businesses, micro-businesses or local or state employment as a result of implementing the sections.

Ms. DeHay also has determined that for each year of the first five years the sections as proposed are in effect the public benefit anticipated as a result of enforcing the sections will be the availability of current standard contract forms. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the proposed sections, other than the costs of obtaining copies of the forms, which would be available at no charge through the TREC web

site, and available from private printers at an estimated cost of $7.50 per set of 50 copies.

Comments on the proposal may be submitted to Loretta R. DeHay, General Counsel, Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188.

The amendments are proposed under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to make and enforce all rules and regulations necessary for the performance of its duties and to establish standards of conduct and ethics for its licensees in keeping with the purpose and intent of the Act to insure compliance with the provisions of the Act.

The statutes affected by the proposed amendments are Texas Occupations Code, Chapters 1101 and 1102, and Senate Bill 914 and House Bill 1530, 80th Legislature, R.S. No other statute, code or article is affected by the proposed amendments.

§535.61. Examinations.

(a) - (e) (No change.)

(f) Notwithstanding Texas Occupations Code §1101.451(f), the [~~The~~] commission shall waive the examination of an applicant for a broker license who has been licensed as a broker in this state no more than two years prior to the filing of the application. The commission shall waive the examination of an applicant for a salesperson license who has been licensed in this state as a broker or salesperson no more than two years prior to the filing of the application.

(g) (No change.)

§535.62. Acceptable Courses of Study.

(a) - (c) (No change.)

(d) A core real estate course also must meet each of the following requirements to be accepted.

(1) - (5) (No change.)

(6) For a course offered by an alternative delivery method, the course met the following requirements.

(A) The course must be certified by a distance learning certification center that is acceptable by the commission.

[~~(A) Every course accepted under this subsection shall teach to mastery. Teaching to mastery means that the course must, at a minimum:~~]

[~~*(i)* divide the material into major units as approved by the commission;~~

[~~*(ii)* divide each of the major units of content into modules of instruction for delivery on a computer or other approved interactive audio or audiovisual programs;~~]

[~~*(iii)* specify the learning objectives for each module of instruction. The learning objectives must be comprehensive enough to ensure that if all the objectives are met, the entire content of the course will be mastered;~~]

[~~*(iv)* specify an objective, quantitative criterion for mastery used for each learning objective;~~]

[~~*(v)* implement a structured learning method by which each student is able to attain each learning objective; ~~]

[~~*(vi)* provide a means of diagnostic assessment of each student's performance on an ongoing basis during each module of instruction, measuring what each student has learned and not learned at regular intervals throughout each module of instruction, and specifically assessing the mastery of each concept covered in the content material;~~]

[~~*(vii)* provide a means of tailoring the instruction to the needs of each student as identified in subparagraph (E) of this paragraph. The process of tailoring the instruction shall ensure that each student receives adequate remediation for specific deficiencies identified by the diagnostic assessment;~~]

[~~*(viii)* continue the appropriate remediation on an individualized basis until the student demonstrates achievement of each mastery criterion; and~~]

[~~*(ix)* require that the student demonstrate mastery of all material covered by the learning objectives for the module before the module is completed.~~]

[~~(B) The commission must approve the method by which each of the above elements of mastery in subparagraph (A)(i) - (ix) of this paragraph is accomplished. ~~]

(B) [~~(C)~~]The rationale for the education processes implemented in the course must be based on sound instructional strategies which have been systematically designed and proven effective through educational research and development. The basis and rationale for any proposed instructional approach must be specified in the application for approval. The following types of programs will not be approved:

(i) those which consist primarily of text material; or

(ii) those which primarily consist of questions similar to those on the state licensing examination.[~~; or~~]

[~~*(iii)* those which consist primarily of combinations of the elements in subparagraphs (A) and (B) of this paragraph.~~]

(C) [~~(D)~~] An approved instructor or the provider's coordinator/director shall grade the written course work.

(D) [~~(E)~~] Every provider offering an approved course under this subsection shall:

(i) ensure that a qualified person is available to answer students' questions or provide assistance as necessary;

(ii) satisfy the commission that procedures are in place to ensure that the student who completes the work is the student who is enrolled in the course; and

(iii) certify students as successfully completing the course only if the student;

(I) has completed all instructional modules required to demonstrate mastery of the material;

(II) has attended any hours of live instruction and/or testing required for a given course; and

(III) has passed either:

(-a-) a proctored final examination administered under controlled conditions to positively identified students, at a location and by an official approved by the commission and graded by the instructor or, if the examination is being graded mechanically or by use of a computer, by the provider, using answer keys approved by the instructor or provider; or

(-b-) an examination by use of a computer under conditions that satisfy the commission that the examinee is the same person who seeks [~~MCE~~] credit.

(7) - (9) (No change.)

(e) - (f) (No change.)

§535.63. Education and Experience Requirements for a License.

(a) (No change.)

(b) Education and experience requirements for a broker license.

(1) (No change.)

(2) Notwithstanding Texas Occupations Code §1101.451(f), the [~~The~~] commission may waive education and experience required for a real estate broker license if the applicant satisfies each of the following conditions.

(A) The applicant must have been licensed as a Texas real estate broker or salesperson no more than six years prior to the filing of the application.

(B) If the applicant was previously licensed as a Texas real estate broker, the applicant must have completed at least 15 hours of mandatory continuing education (MCE) courses within the two-year period prior to the filing of an application for an active license. If the applicant was previously licensed as a Texas real estate salesperson, the applicant must satisfy all current education requirements for an original broker license.

(C) The applicant must have had not less than two years of active experience as a licensed real estate broker or salesperson during the eight-year period prior to the filing of the application.

(3) - (4) (No change.)

(c) Education requirements for a salesperson license.

(1) (No change.)

(2) Notwithstanding Texas Occupations Code §1101.451(f), the [~~The~~] commission may waive the education required for a real estate salesperson license if the applicant satisfies each of the following conditions.

(A) - (B) (No change.)

§535.64. Accreditation of Schools and Approval of Courses and Instructors.

(a) - (f) (No change.)

(g) Forms. The Texas Real Estate Commission adopts by reference the following forms approved by the commission. These documents are published by and available from the Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188, www.trec.state.tx.us.

(1) - (4) (No change.)

(5) Form ED 5-2 [~~1~~], Real Estate Provider Bond;

(6) - (7) (No change.)

(h) - (o) (No change.)

§535.65. Changes in Ownership or Operation of School; Presentation of Courses, Advertising, and Records.

(a) Changes in Ownership or Operation. A school shall obtain the approval of the commission in advance of any material change in the operation of the school, including but not limited to, ownership, location of main office and any other locations where courses are offered, management, and course formats. A request for approval of a change of ownership will be considered as if each proposed new owner had applied for accreditation of the school, and each new owner must meet the standards imposed by §535.64 of this title (relating to Accreditation of Schools and Approval of Instructors). A school requesting approval of a change in ownership shall provide all of the following information or documents to the commission:

(1) - (4) (No change.)

(5) a new bond in the amount of $20,000 [~~$10,000~~] for the proposed new owner(s), a statement from the bonding company indicating that the former bond will transfer to the proposed new owner(s), or other security acceptable to the commission under Texas Occupations Code, Chapter 1101, (the Act), §1101.302.

(6) - (7) (No change.)

(b) - (j) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on October 15, 2007.

TRD-200704877
Loretta R. DeHay
General Counsel and Assistant Administrator
Texas Real Estate Commission
Earliest possible date of adoption: November 25, 2007
For further information, please call: (512) 465-3900

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SUBCHAPTER G. MANDATORY CONTINUING EDUCATION

22 TAC §535.71, §535.72

The Texas Real Estate Commission (TREC) proposes an amendment to §535.71, concerning Mandatory Continuing Education: Approval of Providers, Courses, and Instructors and to adopt by reference one revised form and §535.72, concerning Mandatory Continuing Education: Presentation of Courses, Advertising and Records. The proposed amendments provide the procedure by which education providers must ensure that online Mandatory Continuing Education courses may not be completed in less than 24 hours.

The amendments are necessary in order to comply with legislation enacted during the 80th Legislative Session which created a new requirement that online Mandatory Continuing Education courses may not be completed in less than 24 hours. Senate Bill 914, which became effective September 1, 2007, included revisions to Texas Occupations Code, Chapter 1101.

The amendments were adopted on an emergency basis on August 6, 2007, and published in the August 24, 2007, issue of the *Texas Register* (32 TexReg 5242).

Loretta R. DeHay, General Counsel, has determined that for each year of the first five years that the sections are in effect there will be no fiscal implications for state or local governments as a result of enforcing or administering the sections, nor is there any anticipated impact on local or state employment.

Ms. DeHay also has determined that for each year of the first five years the sections as proposed are in effect the public benefit anticipated as a result of enforcing the sections will be the assurance of appropriate education credit by compliance with statutory requirements and that there is no probable economic cost to persons required to comply with the sections. There is no anticipated impact on small businesses, micro-businesses or local or state employment as a result of implementing the proposed sections.

Comments on the proposal may be submitted to Loretta R. DeHay, General Counsel, Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188.

The amendments are proposed under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapter 1101.

The statute affected by the proposed amendments is Texas Occupations Code, Chapter 1101. No other statute, code, or article is affected by the proposed amendments.

§535.71. Mandatory Continuing Education: Approval of Providers, Courses and Instructors.

(a) - (ee) (No change.)

(ff) For a distance learning course, an online course will not be considered complete until credit is awarded by the provider. The [~~the~~] provider shall award the student credit for the course no earlier than 24 hours after the student starts the course and after the student completes [~~upon completion of~~] the course requirements for credit. The provider [~~and~~] shall report the awarding of credit to the commission[~~. Course credit must be reported~~] either by [~~the provider~~] filing a completed MCE Form 9-8 [~~7~~], Alternative Instructional Methods Reporting Form, signed by the student, or submitting the information contained in MCE form 9-8 [~~7~~] by electronic means acceptable to the commission.

(gg) - (hh) (No change.)

§535.72. Mandatory Continuing Education: Presentation of Courses, Advertising and Records.

(a) (No change.)

(b) Partial credit.

(1) A [~~Effective January 1, 2005, a~~] provider may, but is not required, to permit a student to claim partial credit for a course if:

(A) - (F) (No change.)

(2) (No change.)

(c) (No change.)

(d) Proof of distance learning course completion. In a distance learning course, the provider shall award the student credit for the course no earlier than 24 hours after the student starts the course and after the student completes [~~upon completion of the~~] course requirements for credit. The provider [~~and~~] shall report the awarding of credit to the commission. Course credit must be reported either by the provider filing a completed MCE Form 9-8 [~~7~~], signed by the student, or submitting the information contained in MCE Form 9-8 [~~7~~] by electronic means acceptable to the commission. If the provider chooses to use an electronic reporting process, the process must ensure that only students who complete the course are reported to the commission as receiving course credit and that the process does not compromise the security of commission records.

(e) - (o) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on October 15, 2007.

TRD-200704876

Loretta R. DeHay
General Counsel and Assistant Administrator
Texas Real Estate Commission
Earliest possible date of adoption: November 25, 2007
For further information, please call: (512) 465-3900

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SUBCHAPTER I. LICENSES

22 TAC §§535.91, 535.92, 535.94

The Texas Real Estate Commission (TREC) proposes amendments to §535.91, concerning Renewal Notices, §535.92, concerning Renewal: Time for Filing; Satisfaction of Mandatory Continuing Education Requirements and §535.94, concerning Hearing on Application Disapproval; Probationary License.

The amendments are necessary in order to comply with legislation enacted during the 80th Legislative Session which created a new provision that permits a 3-hour legislative exemption for mandatory continuing education and which transferred the functions of TREC's administrative law judge to the State Office of Administrative Hearings.

The amendments to §§535.91, 535.92, and 535.94 were adopted on an emergency basis at a TREC meeting on August 6, 2007, and published in the August 24, 2007, issue of the *Texas Register* (32 TexReg 5242). Senate Bill 914 and House Bill 1530, each of which became effective September 1, 2007, included revisions to Texas Occupations Code, Chapter 1101.

Loretta R. DeHay, General Counsel, has determined that for each year of the first five years that the sections are in effect there will be no fiscal implications for state or local governments as a result of enforcing or administering the sections, nor is there any anticipated impact on local or state employment.

Ms. DeHay also has determined that for each year of the first five years the sections as proposed are in effect the public benefit anticipated as a result of enforcing the sections will be the assurance of appropriate mandatory continuing education credit for members of the Legislature who are licensed by the Commission and consistent, fair, and efficient administration of contested cases involving application disapprovals, and that there is no probable economic cost to persons required to comply with the sections. There is no anticipated impact on small businesses, micro-businesses or local or state employment as a result of implementing the sections.

Comments on the proposal may be submitted to Loretta R. DeHay, General Counsel, Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188.

The amendments are proposed under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapter 1101.

The statute affected by the proposed amendments is Texas Occupations Code, Chapter 1101. No other statute, code, or article is affected by the proposed amendments.

§535.91. Renewal Notices.

(a) (No change.)

(b) Except [~~On or after January 1, 2005 and except~~] as authorized by §535.92 of this chapter, for the renewal [~~next and all subsequent renewals~~] of a license on active status that is not subject to the annual education requirements of §1101.454 of the Act, the license holder

must attend during the term of the current license, at least two Commission-developed legal courses consisting of a three-hour legal update course and a three-hour legal ethics course to comply with the six legal hours of mandatory continuing education required by §1101.455 of the Act. The remaining nine hours required by §1101.455 of the Act may consist of elective credit courses registered with the commission under subchapter G of this chapter.

(c) (No change.)

§535.92. Renewal: Time for Filing; Satisfaction of Mandatory Continuing Education Requirements.

(a) - (j) (No change.)

(k) A [~~Effective January 1, 2005, a~~] course taken by a licensee to obtain any of the following professional designations, or any other real estate related professional designation course deemed worthy by the commission, may be approved on an individual basis for MCE elective credit if the licensee files for credit for the course using MCE Form 15-0 Individual MCE Elective Credit Request for Professional Designation Course and provides the Commission with a copy of the course completion certificate.

(1) - (9) (No change.)

(l) Effective September 1, 2007, a member of the Texas Legislature who is a licensee need only take three (3) hours in legal ethics to the satisfy the legal mandatory continuing education requirements. To obtain an exemption, the licensee must be a current member of the Legislature.

(m) [~~(l)~~] If a licensee is unable to renew a license on the commission's Internet website, the licensee may renew an unexpired license by obtaining a renewal application form from the Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188 and complying with the requirements of this section and §535.91 of this chapter.

§535.94. Hearing on Application Disapproval: Probationary Licenses.

(a) (No change.)

(b) If the commission or a SOAH administrative law judge [~~an employee of the commission authorized by it to conduct hearings and render final decisions in contested cases~~] determines that issuance of a probationary license is appropriate, the order entered with regard to the application must set forth the terms and conditions for the probationary license. Terms and conditions for a probationary license may include any of the following:

(1) - (6) (No change.)

[~~(c) The commission or an employee of the commission authorized to render final decisions in contested cases may, after notice and hearing as provided in §533.17 of this title (relating to Contested Case: Notice of Hearing) and Administrative Procedure Act, Texas Government Code, §§2001.001, et seq. The commission shall advise licensees in renewal notices and license application forms that default on a loan guaranteed by the TGSLC may prevent a subsequent renewal of a license.~~]

(c) [~~(d)~~] Unless the order granting a probationary license specifies otherwise, a probationary licensee may renew the license after the probationary period by filing a renewal application, satisfying applicable education requirements and paying the prescribed renewal fee.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on October 15, 2007.

TRD-200704875
Loretta R. DeHay
General Counsel and Assistant Administrator
Texas Real Estate Commission
Earliest possible date of adoption: November 25, 2007
For further information, please call: (512) 465-3900

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SUBCHAPTER Q. ADMINISTRATIVE PENALTIES

22 TAC §535.191

The Texas Real Estate Commission (TREC) proposes new Subchapter Q, concerning administrative penalties, including new §535.191, concerning Schedule of Administrative Penalties.

The new rule was adopted on an emergency basis on August 6, 2007, and published in the August 24, 2007, issue of the *Texas Register* (32 TexReg 5243).

The new rule is necessary in order to comply with legislation enacted during the 80th Legislative Session which requires TREC to adopt a schedule of administrative penalties for violations of law in order to ensure that the amount of penalty imposed is appropriate to the violation. Senate Bill 914, which became effective September 1, 2007, included revisions to Texas Occupations Code, Chapter 1101.

Loretta R. DeHay, General Counsel, has determined that for each year of the first five years that the rule is in effect there will be no fiscal implications for state or local governments as a result of enforcing or administering the rule, nor is there any anticipated impact on local or state employment.

Ms. DeHay also has determined that for each year of the first five years the rule as proposed is in effect the public benefit anticipated as a result of enforcing the rule will be the consistent, fair and efficient administration of contested cases based upon objective standards and that other than those persons who are assessed administrative penalties for violations of the law there is no probable economic cost to persons required to comply with the rule. There is no anticipated impact on small businesses, micro-businesses or local or state employment as a result of implementing the rule.

Comments on the proposal may be submitted to Loretta R. DeHay, General Counsel, Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188.

The new rule is proposed under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapter 1101.

The statutes affected by the proposed new rule is Texas Occupations Code, Chapter 1101. No other statute, code, or article is affected by the proposed new rule.

§535.191. Schedule of Administrative Penalties.

(a) The commission may suspend or revoke a license in addition to assessing the administrative penalties set forth in this section.

(b) The administrative penalties set forth in this section take into consideration all of the criteria listed in §1101.702(b) of the Texas Occupations Code.

(c) An administrative penalty range of $100 - $1,500 per violation per day may be assessed for violations of the following sections of the Texas Occupations and Administrative Codes:

(1) §1101.652(a)(8);

(2) §1101.652(b)(23);

(3) §1101.652(b)(29);

(4) 22 TAC §535.92(f);

(5) 22 TAC §535.91(c); and

(6) 22 TAC §535.144.

(d) An administrative penalty range of $500 - $3,000 per violation per day may be assessed for violations of the following sections of the Texas Occupations Code:

(1) §1101.652(a)(7);

(2) §1101.652(b)(1);

(3) §1101.652(b)(7);

(4) §1101.652(b)(8);

(5) §1101.652(b)(10) - (12);

(6) §1101.652(b)(14);

(7) §1101.652(b)(22);

(8) §1101.652(b)(26) - (28);

(9) §1101.652(b)(30) - (31); and

(10) §1101.654(a).

(e) An administrative penalty range of $1,000 - $5,000 per violation per day may be assessed for violations of the following sections:

(1) §1101.351(a);

(2) §1101.652(a)(3);

(3) §1101.652(a)(9);

(4) §1101.652(b)(2) - (6);

(5) §1101.652(b)(9);

(6) §1101.652(b)(13);

(7) §1101.652(b)(15) - (17);

(8) §1101.652(b)(19) - (21);

(9) §1101.652(b)(24) - (25); and

(10) §1101.652(b)(32).

(f) The commission may assess an additional administrative penalty of up to two times that assessed under subsections (c), (d) and (e) of this section if a person has a history of previous violations.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on October 15, 2007.

TRD-200704874

Loretta R. DeHay
General Counsel and Assistant Administrator
Texas Real Estate Commission
Earliest possible date of adoption: November 25, 2007
For further information, please call: (512) 465-3900

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SUBCHAPTER R. REAL ESTATE INSPECTORS

22 TAC §§535.206, 535.208, 535.210 - 535.212, 535.215, 535.216, 535.224

The Texas Real Estate Commission (TREC) proposes amendments to §535.206, concerning Texas Real Estate Inspector Committee, §535.208, concerning Application for a License, §535.210, concerning Fees, new §535.211, concerning Professional Liability Insurance, amendments to §535.212, concerning Education and Experience for an Inspector License, §535.215, concerning Inactive Inspector Status, §535.216, concerning Renewal of License or Registration, and §535.224, concerning Practice and Procedure. The amendments and new rule are proposed to comply with new legislation that included revisions to Texas Occupations Code Chapter 1102 enacted during the 80th Legislative Session, Regular Session, by Senate Bill 914 and House Bill 1530. The effective date of SB 914 and HB 1530 was September 1, 2007.

On August 6, 2007, the commission adopted emergency rules to comply with the September 1 effective date. The emergency rules were published in the August 24, 2007, issue of the *Texas Register* (32 TexReg 5244). Also, on October 8, 2007, the commission amended by emergency action §535.212 which is published in a different part of this issue of the *Texas Register.*

The proposed amendments to §535.206, Texas Real Estate Inspector Committee, set the composition of the committee to consist of 6 professional inspector members and 3 public members appointed by the commission. The amendments detail the qualifications and terms for each member.

The proposed amendments to §535.208, Application for a License, require all applicants for home inspector licenses to provide proof that the applicant maintains professional liability insurance or any other insurance that provides coverage for violations of Subchapter G of Chapter 1102 as required by Texas Occupations Code Chapter 1102. The amendments also propose to adopt by reference Certificate of Insurance, Form REI 8-0, to provide the requisite proof of insurance.

The proposed amendments to §535.210, Fees, establish the fee for an educational evaluation of $30, and delete the fee provisions for filing and renewing a professional inspector business license as the business license requirement was repealed by H.B. 1530.

Proposed new §535.211, provides for home inspector applicants to show proof of professional liability insurance or any other insurance that provides coverage for violations of Subchapter G of Chapter 1102.

The proposed amendments to §535.212 require both education and experience in lieu of the experience required under the traditional three-tier application process to reflect new requirements under §1102.111, Texas Occupations Code. The proposed amendments require an applicant under the alternate application process for a professional inspector license to provide

proof of completion of 200 additional hours of education and either proof of completion of 120 hours of an experience training module, 120 hours of experience working with a licensed professional inspector, or evidence of 5 years of experience in a field directly related to home inspecting.

Under the rule, there are three ways for applicants who are other than actively practicing licensed or registered architects, professional engineers, or engineer-in-trainings to gain required experience. The "education model" experience alternative will provide for experience to be obtained under conditions where the hands-on experience is systematic in its coverage under closely supervised field instruction by an approved education provider. The "inspection experience" alternative will assure that the aspiring licensee gets actual home inspecting experience with a licensed professional inspector for a stated period. Lastly, the experience alternative assures that the applicant has experience in a field directly related to home inspecting. The applicant will be able to choose which method of alternate experience is best suited to the applicant's background and training.

The proposed amendments to §535.212 require an applicant under the alternate application process for a real estate inspector license to provide proof of completion of 30 additional hours of education and proof of either completion of 60 hours of an experience training module, 60 hours of experience working with a licensed professional inspector, or evidence of 3 years of experience in a field directly related to home inspecting.

If the applicant is an actively practicing licensed or registered architect, professional engineer, or engineer-in-training, the applicant meets the professional inspector education and experience requirement by actively practicing for 3 years, and meets the real estate inspector education and experience requirement by actively practicing for 1 year.

If the applicant was enrolled in an education program with a significant experience component prior to September 1, 2007, the applicant meets the experience requirement in §1102.111(a), Texas Occupations Code. Not more than two persons may accompany a licensed professional inspector on inspections to meet the alternate experience component described in the amendments to §535.212.

All applicants under the alternate education and experience licensing method would be required to take the threshold education courses for each license type and pass the relevant licensing examination.

The proposed amendments to §535.215, Inactive Inspector Status, provide that a license will revert to inactive status if a licensee is unable to maintain professional liability insurance coverage or any other insurance that provides coverage for violations of Subchapter G of Chapter 1102 as required by law.

The proposed amendments to §535.216, Renewal of License or Registration, provide for home inspector renewal applicants to show proof of professional liability insurance or any other insurance that provides coverage for violations of Subchapter G of Chapter 1102.

The proposed amendments to §535.224 delete provisions that authorized the committee to hear disciplinary cases as such cases must, under the new laws, be heard by the State Office of Administrative Hearings. The amendments also provide that failure to maintain proof of professional liability insurance or any other insurance that provides coverage for violations of Subchapter G of Chapter 1102 is an additional cause for disciplinary action.

Loretta R. DeHay, General Counsel, has determined that for the first five-year period the sections are in effect there will be no fiscal implications for state or local governments as a result of enforcing or administering the sections. There is no anticipated impact on local or state employment as a result of implementing the sections. There is an anticipated impact on small businesses and micro-businesses as a result of implementing the rules requiring professional liability insurance coverage or any other insurance that provides coverage for violations of Subchapter G of Chapter 1102. Based on information obtained from the Texas Department of Insurance, it is anticipated that such coverage would cost approximately $1,500 to $3,100 per year per licensee employed by the business.

Ms. DeHay also has determined that for each year of the first five years the sections as proposed are in effect the public benefit anticipated as a result of enforcing the sections will be compliance with new statutory provisions to better protect consumers of home inspection services in Texas. Although the total cost of obtaining a license under the alternate education/experience track is difficult to calculate because education providers charge different fees for courses offered to meet the requirements, the anticipated economic cost to persons who are required to comply with the proposed amendments is insignificant as the total number of additional education hours will remain the same. With respect to the liability insurance coverage requirements, based on information provided by the Texas Department of Insurance, the anticipated economic cost to persons who are required to comply with the proposed sections is from $1,500 to $3,100 per year to obtain insurance coverage required under Chapter 1102, Texas Occupations Code.

The amendments and new rule are proposed under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to make and enforce all rules and regulations necessary for the performance of its duties and to establish standards of conduct and ethics for its licensees in keeping with the purpose and intent of the Act to insure compliance with the provisions of the Act.

The statutes affected by the proposed amendments and proposed new rule are Texas Occupations Code, Chapters 1101 and 1102. No other statute, code or article is affected by the proposed amendments and new rule.

§535.206. The Texas Real Estate Inspector Committee.

(a) The [~~composition and~~] functions of the committee are as prescribed by Texas Occupations Code, Chapter 1102.

(b) The committee consists of nine members appointed by the commission as follows:

(1) six members who have been engaged in the practice of real estate inspecting as professional inspectors for at least five years before the member's appointment and who are actively engaged in that practice; and

(2) Three members who represent the public, who are not registered, certified, or licensed by an occupational or regulatory agency in the real estate industry.

(c) Appointments to the committee shall be made without regard to the race, color, disability, sex, religion, age, or national origin of the appointee.

(d) Members of the committee serve staggered six-year terms, with the terms of two inspector members and one public member expiring on February 1 of each odd-numbered year. Initial appointments may be made for terms shorter than six years in order to establish staggered terms. A member holds office until the member's successor is appointed. If a vacancy occurs during a member's term, the commission shall appoint a person to fill the unexpired term.

(e) At a regular meeting in February of each year, the committee shall elect from its members a presiding officer, assistant presiding officer, and secretary.

(f) The commission may remove a committee member if the member:

(1) does not have the qualifications required by subsection (b)(1) of this section;

(2) cannot discharge the member's duties for a substantial part of the member's term;

(3) is absent from more than half of the regularly scheduled commission meetings that the member is eligible to attend during each calendar year, unless the absence is excused by majority vote of the committee; or

(4) violates Texas Occupations Code, Chapter 1102.

(g) If the administrator of the commission has knowledge that a potential ground for removal exists, the administrator shall notify the presiding officer of the commission that the potential ground exists.

(h) The validity of an action of the committee is not affected by the fact that it is taken when a ground for removal of a committee member exists.

(i) The committee may meet at the call of a majority of its members. The committee shall meet at the call of the commission.

(j) [~~(b)~~] A quorum of the committee consists of five members.

(k) [~~(c)~~] The committee shall conduct its meetings in substantial compliance with Robert's Rules of Order.

(l) [~~(d)~~] The secretary of the committee, or in the secretary's absence, a member designated by the chairman, shall prepare written minutes of each meeting and submit the minutes to the committee for approval and for filing with the commission.

(m) [~~(e)~~] The committee shall submit semiannual reports to the commission on or before March 1 and September 1 of each year detailing the performance of the committee. The commission may require the report to be submitted on a form approved by the commission for that purpose. The committee may submit its written recommendations concerning the licensing and regulation of real estate inspectors to the commission at any time the committee deems appropriate. If the commission submits a [~~proposed~~] rule to the committee for development, the chairman of the committee or the chairman's designate shall report to the commission after each meeting at which the proposed rule is discussed on [~~a monthly basis with regard to~~] the committee's consideration of the rule.

(n) The committee is automatically abolished on September 1, 2019 unless the commission subsequently establishes a different date.

[~~(f) Hearings before the committee concerning the licensing or discipline of real estate inspectors will be conducted in accordance with §535.221 of this title (relating to Proceedings before the Committee).~~]

§535.208. Application for a License.

(a) A person desiring to be licensed shall file an application using forms prescribed by the commission. Prior to filing an application for a real estate inspector license or for a professional inspector license, the applicant must pay the required fee for evaluation of the education completed by the person and must obtain a written response from the commission showing the applicant meets current education requirements for the license. The commission may require an applicant to furnish materials such as source outlines, syllabi, course descriptions or official transcripts to verify course content or credit. The commission may not accept an application for filing if the application is materially incomplete or the application is not accompanied by the appropriate fee. The commission may not issue a license unless the applicant:

(1) - (3) (No change.)

(4) provides all supporting documentation or information requested by the commission in connection with the application; and[~~,~~]

(5) submits proof of professional liability insurance, or any other insurance that provides coverage for violations of Subchapter G of Texas Occupations Code, Chapter 1102 (Chapter 1102), as required by Chapter 1102 and §535.211 of this title (relating to Professional Liability Insurance, or Any Other Insurance that Provides Coverage for Violations of Subchapter G of Texas Occupations Code, Chapter 1102).

(b) (No change.)

(c) The Texas Real Estate Commission adopts by reference the following forms approved by the commission. These forms are published by and available from the Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188:

(1) - (3) (No change.)

(4) Application for a License as a Professional Inspector, Form REI 6-9; and

(5) Certificate of Insurance, Form REI 8-0 [~~Business License Application for Professional Inspector License by a Limited Liability Company or Corporation, Form REI 7-0~~].

(d) An application shall be considered void and subject to no further evaluation or processing when one of the following events occurs.

(1) - (3) (No change.)

(4) The applicant fails to submit the required proof of professional liability insurance, or any other insurance that provides coverage for violations of Subchapter G of Chapter 1102, within 60 days after the commission makes written request for proof of insurance.

(e) - (f) (No change.)

§535.210. Fees.

(a) The commission shall charge and collect the following fees:

(1) - (8) (No change.)

(9) a fee of $30 [~~$10~~] for transcript evaluation [~~filing an original application for a license as a professional inspector by a corporation or limited liability company~~];

[~~(10) a fee of $5 for the annual renewal of the license of a professional inspector by a corporation or limited liability company;~~]

(10) [~~(11)~~] a fee of $20 for requesting issuance of a license because of a change of name, return to active status, or change in sponsoring professional inspector; and

(11) [~~(12)~~] a fee of $100 for deposit in the real estate inspection recovery fund upon an applicant's successful completion of

an examination. [~~This fee does not apply to application for a license as a professional inspector by a corporation or limited liability company.~~]

(b) (No change.)

§535.211. Professional Liability Insurance, or Any Other Insurance that Provides Coverage for Violations of Subchapter G of Texas Occupations Code, Chapter 1102.

(a) When an applicant for a license issued under Texas Occupations Code, Chapter 1102 (Chapter 1102), has met all other licensing requirements, the commission shall notify the applicant that the applicant must provide proof of professional liability insurance, or any other insurance that provides coverage for violations of Subchapter G of Texas Occupations Code, Chapter 1102, before the license will be issued.

(b) An inspector must maintain professional liability insurance coverage, or any other insurance that provides coverage for violations of Subchapter G of Chapter 1102, during the period the license is active.

(c) The applicant must provide proof of insurance on Certificate of Insurance form REI 8-0 signed by the applicant's insurance agent.

(d) An inspector must notify the commission within 10 days of the cancellation or non-renewal of professional liability insurance coverage, or any other insurance that provides coverage for violations of Subchapter G of Chapter 1102.

(e) An inspector must retain sufficient records of professional liability insurance coverage, or any other insurance that provides coverage for violations of Subchapter G of Chapter 1102, to document to the commission continuous coverage for the preceding two year license period.

(f) The requirement that an inspector carry professional liability insurance or any other insurance that provides coverage for violations of Subchapter G of Chapter 1102 does not require coverage for violations wherein providing such insurance coverage would be as against public policy.

§535.212. Education and Experience for an Inspector License.

(a) (No change.)

(b) Experience and additional education requirements.

(1) An applicant may substitute the following experience or additional education in lieu of the number of real estate inspections required by Chapter 1102, Texas Occupations Code, (Chapter 1102) and in lieu of the requirement that the applicant has previously been licensed for a specified time as an apprentice inspector or a real estate inspector:

(A) To meet the additional education and experience requirements in connection with an application for a license as a real estate inspector:

(i) Actively practicing licensed or registered architects, professional engineers, or engineer-in-trainings meet some of the education requirements by taking 8 hours in Standards of Practice/Legal/Ethics and 8 hours in Standard Report Form/Report Writing from an approved education provider. They meet the other education requirements by virtue of meeting the education requirements for obtaining and maintaining their licenses as architects or engineers. They meet the experience requirement through two years of active practice under their respective license or registration.

(ii) Persons other than those described in clause (i) of this subparagraph may meet the education requirement by completing 30 additional education hours acceptable to the commission. The additional 30 education hours must include foundation systems, roof systems, framing, electrical systems, HVAC systems, plumbing, building enclosures, and appliances.

(iii) Persons other those described in clause (i) of this subparagraph may meet the experience requirement by either completing an approved experience training module of at least 60 hours from an approved education provider; accompanying a licensed professional inspector for at least 60 hours on actual inspections and related work and having that licensed professional inspector certify such attendance; or by having at least three years of personal experience in a field directly related to home inspecting, including but not limited to installing, servicing, repairing or maintaining the structural, mechanical and electrical systems found in improvements to real property. Documentation of experience must include two reference letters from persons other than the applicant who have personal knowledge of the applicant's occupation and work.

(B) To meet the additional education and experience requirements in connection with an application for a license as a professional inspector:

(i) Actively practicing licensed or registered architects, professional engineers, or engineer-in-trainings meet some of the education requirements by taking 8 hours in Standards of Practice/Legal/Ethics and 8 hours in Standard Report Form/Report Writing from an approved education provider. They meet the other education requirements by virtue of meeting the education requirements for obtaining and maintaining their licenses as architects or engineers. They meet the experience requirement through three years of active practice under their respective license or registration.

(ii) Persons other than those described in clause (i) of this subparagraph may meet the education requirement by completing 200 additional education hours acceptable to the commission. The additional 200 education hours must include 30 hours in Foundation Systems, 25 hours in Roof Systems, 30 hours in Framing, 25 hours in Electrical Systems, 25 hours in HVAC Systems, 25 hours in plumbing, 12 hours in Building Enclosure, 6 hours in Appliances, 8 hours in Standards of Practice/Legal/Ethics, 8 hours in Standard Report Form/Report Writing, and 6 hours of other approved courses.

(iii) Persons other those described in clause (i) of this subparagraph may meet the experience requirement by either completing an approved experience training module of at least 120 hours from an approved education provider; accompanying a licensed professional inspector for at least 120 hours on actual inspections and related work and having that licensed professional inspector certify such attendance; or by having at least five years of personal experience in a field directly related to home inspecting, including but not limited to installing, servicing, repairing or maintaining the structural, mechanical and electrical systems found in improvements to real property. Documentation of experience must be in verified form and from persons other than the applicant who have personal knowledge of the applicant's occupation and work.

(iv) Not more than two persons may accompany a licensed professional inspector on actual inspections to meet the experience requirement of Texas Occupations Code, §1102.111(a).

(C) Persons other than those described in subparagraphs (A)(i) and (B)(i) of this paragraph who, prior to September 1, 2007, were also enrolled in and attending an educational program that met the requirements of Texas Occupations Code, §1102.111 in effect prior to September 1, 2007, may meet the experience requirement by successfully completing that program if it includes in its curriculum applied teaching that includes an experience segment in a lab or simulator environment, actual on-site inspections, or a similar setting

that provides direct experience with the inspection of those systems covered in the course and the use of the basic inspection-related tools. The education provider offering the program must confirm to commission staff, in writing, that the program includes such an experience segment. This subparagraph expires automatically and may not be relied upon for any license application made after January 1, 2008.

[(A) For a real estate inspector license, the applicant must have completed at least 30 additional hours of core real estate inspection courses acceptable to the commission, with at least 10 hours of credit each for the structural, mechanical (including appliances, plumbing, and HVAC components) and electrical systems found in improvements to real property or the applicant must provide documentation satisfactory to the commission to establish that the person has been licensed or registered at least three years as an architect, professional engineer, or engineer-in-training, or has at least five years of personal experience inspecting, installing, servicing, repairing or maintaining each of the structural, mechanical and electrical systems found in improvements to real property. Documentation of experience must include two reference letters from persons other than the applicant who have personal knowledge of the applicant's occupation and work.]

[(B) Prior to January 1, 2005, for a professional inspector license, the applicant must have completed at least 60 additional hours of core real estate inspection courses acceptable to the commission, with at least 20 hours of credit each for the structural, mechanical (including appliances, plumbing, and HVAC components) and electrical systems found in improvements to real property, or provide documentation satisfactory to the commission to establish that the person has been licensed or registered at least five years as an architect, professional engineer, or engineer-in-training, or has at least seven years of personal experience inspecting, installing, servicing, repairing or maintaining each of the structural, mechanical and electrical systems found in improvements to real property. Documentation of experience must be in verified form and from persons other than the applicant who have personal knowledge of the applicant's occupation and work.]

[(C) Effective January 1, 2005, for a professional inspector license, the applicant must have completed at least 320 additional hours of education acceptable to the commission. The additional 320 education hours must include 45 hours in Foundation Systems, 40 hours in Roof Systems, 45 hours in Framing, 40 hours in Electrical Systems, 40 hours in HVAC Systems, 40 hours in plumbing, 20 hours in Building Enclosure, 10 hours in Appliances, 15 hours in Standards of Practice/Legal/Ethics,15 hours in Standard Report Form/Report Writing, and 10 hours of other approved courses or provide documentation satisfactory to the commission to establish that the person has been licensed or registered at least five years as an architect, professional engineer, or engineer-in-training, or has at least seven years of personal experience inspecting, installing, servicing, repairing or maintaining each of the structural, mechanical and electrical systems found in improvements to real property. Documentation of experience must include two reference letters from persons other than the applicant who have personal knowledge of the applicant's occupation and work.]

(2) (No change.)

§535.215. Inactive Inspector Status.

(a) For the purposes of this section, an "inactive" inspector is a licensed professional inspector, real estate inspector, or apprentice inspector who is not authorized by law to engage in the business of performing real estate inspections as defined by Texas Occupations Code, Chapter 1102 (Chapter 1102), and who has been placed on inactive status by the commission for any of the following reasons:

(1) - (4) (No change.)

(5) the expiration, suspension, or revocation of the license of the inspector's sponsoring professional inspector; [.]

(6) the failure of the licensee to provide to the commission proof of professional liability insurance or any other insurance that provides coverage for violations of Subchapter G of Chapter 1102; or

(7) the expiration or non-renewal of the inspector's professional liability insurance or any other insurance that provides coverage for violations of Subchapter G of Chapter 1102.

(b) - (f) (No change.)

§535.216. Renewal of License or Registration.

(a) A person licensed by the commission under Texas Occupations Code, Chapter 1102 (Chapter 1102), may renew the license by timely filing the prescribed application for renewal, paying the appropriate fee to the commission and satisfying applicable continuing education requirements as required by Chapter 1102, and by §535.218 of this title (relating to Continuing Education), and providing to the commission proof of professional liability insurance, or any other insurance that provides coverage for violations of Subchapter G of Chapter 1102, with a minimum limit of $100,000 per occurrence as required by §535.211 of this title (relating to Professional Liability Insurance) and §1102.203, Texas Occupations Code.

(b) (No change.)

(c) A licensee also may renew an unexpired license by accessing the commission's Internet web site, entering the required information on the renewal application form, satisfying applicable education and professional liability insurance, or any other insurance that provides coverage for violations of Subchapter G of Chapter 1102 requirements and paying the appropriate fee in accordance with the instructions provided at the site by the commission.

(d) (No change.)

[(e) The commission may not renew a license issued to a corporation or limited liability company unless the corporation or limited liability company has designated an officer, manager or employee who meets the requirements of Chapter 1102, Texas Occupations Code, including satisfaction of continuing education requirements. No person may act as designated officer, designated manager or designated employee if the person has failed to meet continuing education requirements. For the purpose of this section, continuing education requirements for the designated officer, designated manager or designated employee must be satisfied during the term of any individual professional inspector license held by the officer, manager or employee.]

(e) [(f)] A renewal application is deemed filed when placed in the mail properly addressed to the commission with appropriate postage paid.

(f) [(g)] An inspector licensed on active status who timely files a renewal application together with the applicable fee, [and] evidence of completion of any required continuing education courses, and proof of professional liability insurance, or any other insurance that provides coverage for violations of Subchapter G of Chapter 1102, may continue to practice prior to receiving a new license certificate from the commission. If the license has expired and the licensee files an application to renew the license, the licensee may not practice until the new certificate is received.

§535.224. Practice and Procedure [Proceedings before the Committee].

[(a) The committee may be authorized by the commission to conduct administrative hearings or recommend the entry of final orders by the commission, or both, in contested cases regarding:]

[(1) professional inspectors, real estate inspectors, or apprentice inspectors who are alleged to have violated a provision of Texas Occupations Code, Chapter 1102 (Chapter 1102) or a rule of the commission;]

[(2) persons whose applications for licensing as professional inspectors, real estate inspectors or as apprentice inspectors have been initially denied by the commission on a ground relating to the applicant's honesty, trustworthiness and integrity; and]

[(3) professional inspectors, real estate inspectors, or apprentice inspectors who have been convicted of a criminal offence listed in §541.1 of this title (relating to Criminal Offense Guidelines).]

[(b) If the committee determines after a hearing that disciplinary action is warranted, the committee may recommend that the commission issue a reprimand, or suspend or revoke a license. The committee may recommend that an order of suspension or revocation be probated in whole or in part by the commission or that the probation be subject to reasonable terms and conditions in the manner contemplated by Texas Occupations Code, Chapter 1101, §1101.656. The committee may recommend that the commission enter a final order denying a license or that a probationary license be issued in the manner contemplated by §535.91 of this title (relating to Hearing on Application Disapproval; Probationary License).]

(a) [(c)] Proceedings [before the committee] shall be conducted [by the committee] in the manner contemplated by §§533.1 - 533.8, 533.20, 533.30 - 533.37 and 533.40 [§§535.31 - 533.39] of this title (relating to Practice and Procedure) and with the Texas Government Code, Chapter 2001, et[.] seq.[. The chairman of the committee or a member designated by the chairman shall act as presiding officer and may vote as any other member.]

(b) [(d)] In addition to the grounds for disciplinary action provided in Texas Occupations Code, Chapter 1102 (Chapter 1102), a license of an inspector may be suspended or revoked by the commission if the inspector:

(1) fails to make good a check issued to the commission within 30 days after the commission had mailed a request for payment by certified mail to the inspector last known business address as reflected by the commission's records;

(2) fails or refuses on demand to produce a document, book or record in his possession concerning a real estate inspection conducted by him for examination by the commission or its authorized agent; [or]

(3) fails within 10 days to provide information requested by the commission or its authorized agent in the course of an investigation of a complaint;[.]

(4) fails to maintain professional liability insurance coverage or any other insurance that provides coverage for violations of Subchapter G of Chapter 1102 during the period a license is active; or

(5) fails to notify the commission within 10 days of the cancellation or non-renewal of professional liability insurance coverage, or any other insurance that provides coverage for violations of Subchapter G of Chapter 1102.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on October 15, 2007.

TRD-200704873
Loretta R. DeHay
General Counsel and Assistant Administrator
Texas Real Estate Commission
Earliest possible date of adoption: November 25, 2007
For further information, please call: (512) 465-3900

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22 TAC §535.209

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Texas Real Estate Commission or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Texas Real Estate Commission (TREC) proposes to repeal existing §535.209, concerning Professional Inspector Corporations and Limited Liability Companies.

The repeal is necessary in order to comply with legislation enacted during the 80th Legislative Session which repealed the licensure requirements for corporations and limited liability companies that engage in home inspection services for a fee.

The repeal was adopted on an emergency basis on August 6, 2007, and published in the August 24, 2007, issue of the *Texas Register* (32 TexReg 5247).

House Bill 1530, which became effective September 1, 2007, included revisions to Texas Occupations Code, Chapter 1102.

Loretta R. DeHay, General Counsel, has determined that for the first five-year period the repeal is in effect there will be no fiscal implications for state or local governments as a result of repealing the rule, nor is there any anticipated impact on local or state employment.

Ms. DeHay has also determined that for each year of the first five years the repeal as proposed is in effect the public benefit anticipated as a result of enforcing the repeal will be the consistent application of statutory requirements. There is no anticipated impact on small businesses, micro-businesses or local or state employment as a result of implementing the section.

Comments on the proposed repeal may be submitted to Loretta R. DeHay, General Counsel, Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188.

The repeal is proposed under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapter 1102.

The statute affected by the proposed repeal is Texas Occupations Code, Chapter 1102. No other statute, code, or article is affected by the proposed repeal.

§535.209. Professional Inspector Corporations and Limited Liability Companies.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on October 15, 2007.

TRD-200704872

Loretta R. DeHay
General Counsel and Assistant Administrator
Texas Real Estate Commission
Earliest possible date of adoption: November 25, 2007
For further information, please call: (512) 465-3900

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CHAPTER 537. PROFESSIONAL AGREEMENTS AND STANDARD CONTRACTS

22 TAC §§537.30, 537.31, 537.41, 537.47, 537.50

The Texas Real Estate Commission (TREC) proposes amendments to §537.30, concerning Standard Contract Form TREC No. 23-7, New Home Contract (Incomplete Construction); §537.31, concerning Standard Contract Form TREC No. 24-7, New Home Contract (Completed Construction); §537.41, concerning Standard Contract Form TREC No. 34-3, Addendum for Property Located Seaward of the Gulf Intracoastal Waterway; §537.47, concerning Standard Contract Form TREC No. 40-3, Third Party Financing Condition Addendum; and new §537.50, concerning Standard Contract Form TREC No. 43-0, Addendum Containing Required Notices Under §420.001 and §420.002, Texas Property Code. The amendments propose to adopt by reference five revised contract forms for use by Texas real estate licensees.

Texas real estate licensees are generally required to use forms promulgated by TREC when negotiating contacts for the sale of real property. These forms are drafted by the Texas Real Estate Broker-Lawyer Committee, an advisory body consisting of six attorneys appointed by the President of the State Bar of Texas, six brokers appointed by TREC, and a public member appointed by the governor.

The amendment to §537.30 proposes to adopt by reference Standard Contract Form TREC No. 23-7, New Home Contract (Incomplete Construction). The disclosure on page 8 of the contract required by §27.007(a), Texas Property Code, is revised because the disclosure was amended by House Bill 3147, 80th Legislature, R.S. (2007).

The amendment to §537.31 proposes to adopt by reference Standard Contract Form TREC No. 23-7, New Home Contract (Completed Construction). The proposed revisions are the same as those proposed for Form TREC No. 23-7.

The amendment to §537.41 proposes to adopt by reference Standard Contract Form TREC No. 34-3, Addendum for Property Located Seaward of the Gulf Intracoastal Waterway. The addendum was revised to reflect changes that were made to the disclosure under House Bill 2819, 80th Legislature, R.S. (2007).

The amendment to §537.47 proposes to adopt by reference Standard Contract Form TREC No. 40-3, Third Party Financing Condition Addendum. On page 2 of the addendum, a reference to having HUD form 92564-CN signed and dated by the buyer was removed as the form no longer has a signature line.

New §537.50 is proposed to adopt by reference Standard Contract Form TREC No. 43-0, Addendum Containing Required Notices Under §420.001 and §420.002, Texas Property Code. The new addendum contains disclosures required by House Bill 1038, 80th Legislature, R.S. (2007) in cases where the seller may be subject to or exempt from the requirements of Title 16, Texas Property Code, regarding registration with the Texas Residential Construction Commission.

Loretta R. DeHay, General Counsel, has determined that for the first five-year period the sections are in effect there will be no fiscal implications for state or local governments as a result of enforcing or administering the sections. There is no anticipated impact on small businesses, micro-businesses or local or state employment as a result of implementing the sections.

Ms. DeHay also has determined that for each year of the first five years the sections as proposed are in effect the public benefit anticipated as a result of enforcing the sections will be the availability of current standard contract forms. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the proposed sections, other than the costs of obtaining copies of the forms, which would be available at no charge through the TREC web site.

Comments on the proposal may be submitted to Loretta R. DeHay, General Counsel, Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188.

The amendments are proposed under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapters 1101 and 1102; and to establish standards of conduct and ethics for its licensees to fulfill the purposes of chapters 1101 and 1102 and ensure compliance with Chapters 1101 and 1102.

The statute affected by these proposed amendments and new rule is Texas Occupations Code, Chapter 1101. No other statute, code or article is affected by the proposed amendments and new rule.

§537.30. Standard Contract Form TREC No. 23-7 [6].

The Texas Real Estate Commission adopts by reference standard contract form TREC No. 23-7 [6] approved by the Texas Real Estate Commission in 2008 [2006] for use in the sale of a new home where construction is incomplete. This document is published by and available from the Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188, www.state.tx.us.

§537.31. Standard Contract Form TREC No. 24-7 [6].

The Texas Real Estate Commission adopts by reference standard contract form TREC No. 24-7 [6] approved by the Texas Real Estate Commission in 2008 [2006] for use in the sale of a new home where construction is completed. This document is published by and available from the Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188, www.state.tx.us.

§537.41. Standard Contract Form TREC No. 34-3 [2].

The Texas Real Estate Commission adopts by reference standard contract form TREC No. 34-3 [2] approved by the Texas Real Estate Commission in 2008 [2007] for use as an addendum to be added to promulgated forms of contracts in the sale of property located seaward of the Gulf Intracoastal Waterway. This document is published by and available from the Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188, www.state.tx.us.

§537.47. Standard Contract Form TREC No. 40-3 [2].

The Texas Real Estate Commission adopts by reference standard contract form TREC No. 40-3 [2] approved by the Texas Real Estate Commission in 2008 [2006] for use as an addendum to be added to promulgated forms of contracts when there is a condition for third party financing. This document is published by and available from the Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188, www.state.tx.us.

§537.50. Standard Contract Form TREC No. 43-0.

The Texas Real Estate Commission adopts by reference standard contract form TREC No. 43-0 approved by the Texas Real Estate Commission in 2008 for use as an addendum to be added to promulgated forms of contracts when there is a condition requiring notices under §420.001 and §420.002, Texas Property Code. This document is published by and available from the Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188, www.state.tx.us.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on October 15, 2007.

TRD-200704871
Loretta R. DeHay
General Counsel and Assistant Administrator
Texas Real Estate Commission
Earliest possible date of adoption: November 25, 2007
For further information, please call: (512) 465-3900

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CHAPTER 539. PROVISIONS OF THE RESIDENTIAL SERVICE COMPANY ACT SUBCHAPTER O. ADMINISTRATIVE PENALTIES

22 TAC §539.140

The Texas Real Estate Commission (TREC) proposes new Subchapter O, concerning administrative penalties, including new §539.140, concerning Schedule of Administrative Penalties.

The new rule is necessary in order to comply with legislation enacted during the 80th Legislative Session which requires the Commission to adopt a schedule of administrative penalties for violations of law by residential service companies in order to ensure that the amount of penalty imposed is appropriate to the violation.

The new rule was adopted on an emergency basis on August 6, 2007, and published in the August 24, 2007, issue of the *Texas Register* (32 TexReg 5248).

Senate Bill 914, which became effective September 1, 2007, included revisions to Texas Occupations Code, Chapter 1303.

Loretta R. DeHay, General Counsel, has determined that for each year of the first five years that the rule is in effect that the fiscal implications of the proposed rule is too difficult to determine but that there is no anticipated impact on local or state employment.

Ms. DeHay also has determined that for each year of the first five years the rule as proposed is in effect the public benefit anticipated as a result of enforcing the rule will be the consistent, fair and efficient administration of contested cases based upon objective standards and that other than those companies which are assessed administrative penalties for violations of the law there is no probable economic cost to persons required to comply with the rule. There is no anticipated impact on small businesses, micro-businesses or local or state employment as a result of implementing the rule.

Comments on the proposal may be submitted to Loretta R. DeHay, General Counsel, Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188.

The new rule is proposed under Texas Occupations Code, §1303.151, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapter 1303.

The statutes affected by the new rule is Texas Occupations Code, Chapter 1303. No other statute, code or article is affected by the proposed new rule.

§539.140. Schedule of Administrative Penalties.

(a) The administrative penalties set forth in this section take into consideration all of the criteria listed in §1303.355(c) of the Texas Occupations Code.

(b) An administrative penalty range of $100 - $1,500 per violation per day may be assessed for violations of the following sections of the Texas Occupations and Administrative Codes:

(1) 22 TAC §539.137(b);

(2) §1303.202(a);

(3) §1303.202(b);

(4) §1303.052; and

(5) §1303.352(a)(1).

(c) An administrative penalty range of $500 - $5,000 per violation per day may be assessed for the following violations of the Texas Occupations and Administrative Codes:

(1) §1303.101;

(2) §1303.151;

(3) 22 TAC §539.81;

(4) §1303.153;

(5) §1303.352(a)(2);

(6) §1303.352(a)(3); and

(7) §1303.352(6).

(d) The commission may assess an additional administrative penalty of up to two times that assessed under subsections (a), (b) and (c) of this section if the residential service company has a history of previous violations.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on October 15, 2007.

TRD-200704870
Loretta R. DeHay
General Counsel and Assistant Administrator
Texas Real Estate Commission
Earliest possible date of adoption: November 25, 2007
For further information, please call: (512) 465-3900

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TITLE 28. INSURANCE

PART 1. TEXAS DEPARTMENT OF INSURANCE

CHAPTER 3. LIFE, ACCIDENT AND HEALTH INSURANCE AND ANNUITIES

SUBCHAPTER NN. CONSUMER NOTICES FOR LIFE INSURANCE POLICY AND ANNUITY CONTRACT REPLACEMENTS

28 TAC §§3.9501 - 3.9506

The Texas Department of Insurance proposes new Subchapter NN, §§3.9501 - 3.9506, relating to the replacement of certain life insurance policies and annuity contracts. This proposal is necessary because of the requirements of HB 2762, 80th Legislature, Regular Session, effective September 1, 2007, that the Department adopt rules to accomplish and enforce the purpose of new Chapter 1114 of the Insurance Code and adopt or approve model documents to be used as consumer notices under the new chapter.

As provided in §1114.001, Chapter 1114 was enacted to (i) regulate the activities of insurers and agents with respect to the replacement of existing life insurance and annuities; (ii) protect the interests of purchasers of life insurance or annuities by establishing minimum standards of conduct to be observed in replacement or financed purchase transactions; (iii) ensure that purchasers receive information with which a decision in the purchaser's best interest may be made; (iv) reduce the opportunity for misrepresentation and incomplete disclosure; and (v) establish penalties for failure to comply with the requirements adopted under Chapter 1114.

The purpose of the consumer notices proposed in this subchapter is to provide consumers with necessary information regarding potential consequences resulting from the replacement of annuity contract or life insurance policies that will enable them to more likely make a decision that is in their best interest and to reduce the opportunity for misrepresentation and incomplete disclosure.

The text in the proposed Figure: 28 TAC §3.9504(b) notice for insurers using agents, the proposed Figure: 28 TAC §3.9505(a)(1) notice for direct response applicants intending replacement, and the proposed Figure: 28 TAC §3.9505(a)(2) notice required for direct response applicants who respond that they do not intend a replacement or who fail to respond to an insurer's inquiry is verbatim from the National Association of Insurance Commissioners Model Number 613, Life Insurance and Annuities Replacement Model Regulation (NAIC Model). Based upon conversations with life insurance and annuity industry representatives, it is the Department's understanding that these NAIC Model notices are currently in widespread use throughout the industry.

Beginning April 1, 2008, the text in both the proposed Figure: 28 TAC §3.9504(b) notice required for insurers using agents and the proposed Figure: 28 TAC §3.9505(a)(1) notice for direct response applicants intending replacement must be prefaced by the proposed Department consumer advisory in Figure: 28 TAC §3.9506(b). The Department advisory is necessary to alert consumers in a succinct manner to the possible negative consequences that may result from life insurance and annuity replacement transactions and to summarize issues explored in further detail in the remainder of the consumer notice. The effective date of April 1, 2008, for the Department advisory requirement is proposed to allow insurers sufficient time to exhaust any existing supply of notices and to prepare and print notices that include the Department advisory in addition to the required text in the NAIC Model notices.

The proposed adoption of the model notices relating to life insurance and annuity replacement is within the Commissioner's scope of authority under the Insurance Code §§1114.006 and 1114.007. Section 1114.006 requires that the Commissioner by rule adopt or approve model documents to be used for consumer notices under Chapter 1114. Section 1114.007 authorizes the Commissioner to adopt reasonable rules in the manner prescribed by Insurance Code, Subchapter A, Chapter 36, to accomplish and enforce the purpose of Chapter 1114.

Proposed §3.9501 states the purpose of the proposed subchapter.

Proposed §3.9502 specifies that the terms "agent" and "producer" shall have the same meanings when used in the subchapter and defines those terms.

Proposed §3.9503 specifies the content and format requirements for the proposed notices. Proposed §3.9503(a) details the formatting and content requirements for the proposed text in Figure: 28 TAC §3.9504(b), in Figure: 28 TAC §3.9505(a)(1) and in Figure: 28 TAC §3.9505(a)(2) and provides that references that are not applicable to the product being sold or replaced may be omitted from the required text, as provided in §3.9503(c). Proposed §3.9503(b) specifies formatting and content requirements for the proposed text in Figure: 28 TAC §3.9506(b) and provides that references that are not applicable to the product being sold or replaced may be omitted from the required text, as provided in §3.9503(c). Proposed §3.9503(c) specifies that a reference in a required notice is presumed applicable if it could be applicable under any circumstances and therefore may not be omitted from the required notice. Proposed §3.9503(d) specifies that an insurer may add a company name and identifying form number to notices required under the subchapter.

Proposed §3.9504 addresses the consumer notice regarding life insurance policy and annuity contract replacements that is to be used for insurers using agents. Proposed §3.9504(a) requires an agent initiating an application for a life insurance policy or annuity contract to submit information to the insurer on whether an applicant for a life insurance policy or annuity contract has existing policies or contracts. Proposed §3.9504(b) specifies the conditions that require the use of the consumer notice and the procedures for providing the notice to the applicant. The proposed Figure: 28 TAC §3.9504(b) contains the text of the required notice to be used for insurers using agents.

Proposed §3.9505 regulates notices required in direct response sales governed by Insurance Code Chapter 1114. Proposed §3.9505(a) requires insurers to inquire whether an applicant applying in response to a direct response solicitation intends to replace, discontinue, or change an existing policy or contract. Proposed §3.9505(a)(1) requires that if the insurer proposed the replacement or if the applicant responds affirmatively that they intend a replacement, the insurer must send to the applicant the notice specified in proposed Figure: 28 TAC §3.9505(a)(1). The proposed Figure: 28 TAC §3.9505(a)(1) contains the text of the required notice.

Proposed §3.9505(a)(2) requires that if the applicant states a replacement is not intended or fails to respond to the insurer's inquiry regarding the applicant's replacement intention, the insurer must send the notice specified in the proposed Figure: 28

TAC §3.9505(a)(2). The proposed Figure: 28 TAC §3.9505(a)(2) contains the text of the required notice.

Proposed §3.9506(a) requires that effective April 1, 2008, the text in Figure: 28 TAC §3.9504(b) and Figure: 28 TAC §3.9505(a)(1) be prefaced with the text in Figure: 28 TAC §3.9506(b). Proposed §3.9506(b) specifies that the text in Figure: 28 TAC §3.9506(b) may be printed on a separate piece of paper or printed on the same piece of paper as the text in Figure: 28 TAC §3.9504(b) and Figure: 28 TAC §3.9505(a)(1), but in either case must meet the formatting and content requirements of §3.9503.

FISCAL NOTE. Jennifer Ahrens, Senior Associate Commissioner, Life, Health & Licensing Division, has determined that for each year of the first five years the proposal will be in effect, there will be no fiscal impact to state and local governments as a result of the enforcement or administration of the proposal. There will be no measurable effect on local employment or the local economy as a result of the proposal.

PUBLIC BENEFIT/COST NOTE. Ms. Ahrens has determined that for each year of the first five years the proposal is in effect, the anticipated public benefit will be that consumers will have more information regarding potential consequences resulting from the replacement of annuity contracts or life insurance policies, and will therefore be more likely to make a decision that is in their best interest.

The probable costs to insurers required to comply with the proposed rules will result from the printing and mailing of the consumer notices specified in the proposal. The Department has developed estimated costs for compliance with the proposed rules based on costs that have been previously used by the Department for similar compliance requirements. Individual insurers that identify, based on their own operations, differing costs for those cost components will be able to calculate their particular costs using the Department's cost analysis approach.

The Department's estimated cost assumes the following factors: (i) insurers mailing the required notices in proposed §§3.9505(a)(1) and 3.9505(a)(2) to direct response applicants will include the notices in the same package as mailed policies or contracts, resulting in no additional postage cost; (ii) insurers mailing the required notice in proposed §§3.9505(a)(1) to direct response applicants intending replacement will include a prepaid return envelope in the same package as mailed policies or contracts, resulting in no additional postage cost; (iii) the notice required in proposed §3.9504(b) for insurers using agents and the notice required in §3.9505(a)(1) for direct response applicants intending replacements will be three printed pages; and (iv) that the notice in proposed §3.9505(a)(2) required for direct response applicants not intending a replacement or failing to answer an insurer's inquiry regarding replacement intention will be a single printed page.

The Department is proposing an April 1, 2008 effective date for compliance with the requirement in proposed §3.9506(b) to include the Department advisory in the notices in proposed §3.9504(b) and §3.9505(a)(1). This should allow an insurer to exhaust its existing stock of already printed notices prior to the April 1, 2008 effective date. New notices can be produced in the regular course of business for use beginning on April 1, 2008. Additionally, the Department does not anticipate that the costs associated with the printing and mailing of the required consumer notices in proposed §3.9504(b) and §3.9505(a)(1) will necessarily increase after April 1, 2008, as a result of the requirement to include the proposed §3.9506(b) Department advisory. This is based on the fact that the text in the Department advisory is brief, and that while insurers are required to print the advisory to precede the text of the §3.9504(b) and §3.9505(a)(1) notices, they are provided the option of printing the advisory on the same page as the required §3.9504(b) and §3.9505(a)(1) notices. An insurer's decision to print the Department advisory on a separate piece of paper will result in an additional cost to the insurer.

The estimates used in the Department's analysis assume that a printed page costs $0.05; a return envelope costs $0.05; and return postage for one to three pages of paper is $0.41. Using these assumptions, the following are the estimated costs for each of the three proposed notices.

The consumer notice required by proposed §3.9504(b) is estimated to cost $0.15 per agent transaction (3 pages of paper for the notice multiplied by $0.05). Insurers that choose to print the Department advisory required beginning April 1, 2008, on a separate piece of paper from the notice required by proposed §3.9504(b) will have an additional cost of $0.05 per agent transaction.

The estimated cost for the consumer notice required by proposed §3.9505(a)(1) is $0.61 per transaction involving a direct solicitation applicant intending a replacement (3 pages of paper for the notice multiplied by $0.05 plus $0.05 for a prepaid return envelope, and $0.41 for postage for the return envelope for the applicant to return the signed notice) with no additional cost for postage because the notice and prepaid return envelope will be included in the same package as mailed policies or contracts. Insurers that choose to print the Department advisory required beginning April 1, 2008, on a separate piece of paper from the notice required by proposed §3.9505(a)(1) will have an additional cost of $0.05.

The estimated cost for a consumer notice required by proposed §3.9505(a)(2) is $0.05 per transaction involving a direct solicitation applicant not intending a replacement or failing to answer an insurer's inquiry regarding their replacement intention (one page of paper for the notice) with no additional cost for postage because the notice and prepaid return envelope will be included in the same package as mailed policies or contracts.

The actual total cost to each insurer required to comply with the proposed rules will depend upon the individual insurer's particular costs for each cost component, the number of transactions requiring notices, whether those transactions are agent or direct solicitation sales, the number of pages used in printing the notices and whether the notices are printed one-sided or two-sided.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS FOR SMALL AND MICRO BUSINESSES.

As required by the Government Code §2006.002(c), the Department has determined that the proposal may have an adverse economic effect on approximately 25 to 50 small or micro-businesses that are required to comply with the proposed rules. The probable cost to small or micro-business insurers required to comply with the proposed rules will result from the printing and mailing of the consumer notices specified in the proposal. The cost of compliance with the proposal will not vary for each required consumer notice between large business and small or micro-businesses, and the Department's cost analysis and resulting estimated costs for insurers in the Public Benefit/Cost Note portion of this proposal is equally applicable to small or micro-businesses. The total cost to large business and small or

micro-business insurers for printing and mailing notices required by this proposal is not dependent upon the size of the insurers, but rather is dependent upon the individual insurer's particular costs for each cost component, the number of transactions requiring notices, whether those transactions are agent or direct solicitation sales, the number of pages used in printing the notices and whether the notices are printed one-sided or two-sided.

In accordance with the Government Code §2006.002(c-1), the Department has determined that even though the proposal may have an adverse economic effect on small or micro-businesses that are required to comply with the proposal, the proposal does not require a regulatory flexibility analysis that is mandated by §2006.002(c)(2) of the Government Code. Section 2006.002(c)(2) requires that a state agency, before adopting a rule that may have an adverse economic effect on small businesses, prepare a regulatory flexibility analysis that includes the agency's consideration of alternative methods of achieving the purpose of the proposed rule. Section 2006.002(c-1) of the Government Code requires that the regulatory flexibility analysis "consider, if consistent with the health, safety, and environmental and economic welfare of the state, using regulatory methods that will accomplish the objectives of applicable rules while minimizing adverse impacts on small businesses." Therefore, an agency is not required to consider alternatives that, while possibly minimizing adverse impacts on small and micro-businesses, would not be protective of the health, safety, and environmental and economic welfare of the state.

The purpose of the statute authorizing this proposal, Chapter 1114, as provided in §1114.001, is to (i) regulate the activities of insurers and agents with respect to the replacement of existing life insurance and annuities; (ii) protect the interests of purchasers of life insurance or annuities by establishing minimum standards of conduct to be observed in replacement or financed purchase transactions; (iii) ensure that purchasers receive information with which a decision in the purchaser's best interest may be made; (iv) reduce the opportunity for misrepresentation and incomplete disclosure; and (v) establish penalties for failure to comply with the requirements adopted under Chapter 1114.

The purpose of this proposal is to protect the economic welfare of consumers contemplating the purchase of life insurance policies or annuity contracts by providing them with necessary information to enable them to make important financial decisions that are in their best interest. Applicants without this information or with insufficient information may make life insurance or annuity transaction decisions resulting in surrender charges, penalties, tax liabilities, or an inability to access funds without a penalty for substantial periods of time. The consumer notices proposed to be adopted in this proposal are consistent with the legislative intent of Chapter 1114 of the Insurance Code that the economic interests of all consumers engaging in life insurance and annuity contract replacement transactions are protected and not just the economic interests of those consumers who engage in such transactions with large insurers.

Therefore, the Department has determined in accordance with §2006.002(c-1) of the Government Code that because the purpose of the proposal and the authorizing statute, Chapter 1114 of the Insurance Code, is to protect consumer economic interests, there are no regulatory alternatives to the required notices in this proposal that will sufficiently protect the economic interests of consumers who purchase life insurance or annuities from small or micro-business insurers.

TAKINGS IMPACT ASSESSMENT. The Department has determined that no private real property interests are affected by this proposal and that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking or require a takings impact assessment under the Government Code §2007.043.

REQUEST FOR PUBLIC COMMENT. To be considered, written comments on the proposal must be submitted no later than 5:00 p.m. on November 26, 2007, to Gene C. Jarmon, General Counsel and Chief Clerk, Mail Code 113-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. An additional copy of the comment must be simultaneously submitted to Jennifer Ahrens, Senior Associate Commissioner, Life, Health & Licensing Division, Mail Code 107-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104.

The Commissioner will consider the adoption of the proposed new sections in a public hearing under Docket Number 2675, at 9:00 a.m., on November 20, 2007, in Room 100 of the William P. Hobby, Jr. State Office Building, 333 Guadalupe Street, Austin, Texas 78701. Written and oral comments presented at the hearing will be considered.

STATUTORY AUTHORITY. The new sections are proposed under the Insurance Code §§1114.006, 1114.007 and 36.001. Section 1114.006 requires the Commissioner by rule to adopt or approve model documents to be used for consumer notices under the Insurance Code Chapter 1114. Section 1114.007 authorizes the Commissioner to adopt reasonable rules in the manner prescribed by Subchapter A, Chapter 36, of the Insurance Code to accomplish and enforce the purpose of the Insurance Code Chapter 1114. Section 1114.001 states that the purpose of Chapter 1114 is to regulate the activities of insurers and agents with respect to the replacement of existing life insurance and annuities; protect the interests of purchasers of life insurance or annuities by establishing minimum standards of conduct to be observed in certain transactions; ensure that purchasers receive information with which a decision in the purchaser's best interest may be made; reduce the opportunity for misrepresentation and incomplete disclosure; and establish penalties for failure to comply with the requirements adopted under Chapter 1114. Section 36.001 authorizes the Commissioner of Insurance to adopt any rules necessary and appropriate to implement the powers and duties of the Texas Department of Insurance under the Insurance Code and other laws of this state.

CROSS REFERENCE TO STATUTE. The following statutes are affected by this proposal: Insurance Code §§1114.006 and 1114.007, 1114.051, 1114.055

§3.9501. Purpose.

The purpose of this subchapter is to specify the content and procedural requirements for consumer notices for life insurance policy and annuity contract replacements as required by the Insurance Code §1114.006.

§3.9502. Definitions.

When used in this subchapter, the words "agent" and "producer" shall mean, unless the context clearly indicates otherwise, an individual who holds a license under Insurance Code Chapter 4054 and who sells, solicits, or negotiates life insurance or annuities in this state.

§3.9503. Consumer Notice Content and Format Requirements.

(a) The text contained in Figure: 28 TAC §3.9504(b), Figure: 28 TAC §3.9505(a)(1) and Figure: 28 TAC §3.9505(a)(2) must be in at

least 10 point type and presented in the same order as indicated in each figure and without any change to the specified text, including bolding effects, except that references that are not applicable to the product being sold or replaced may be omitted, as provided in subsection (c) of this section.

(b) The text contained in Figure: 28 TAC §3.9506(b) must be in at least 12 point type and presented in the same order as indicated in Figure: 28 TAC §3.9506(b) and without any change to the specified text, including bolding effects, except that references that are not applicable to the product being sold or replaced may be omitted, as provided in subsection (c) of this section.

(c) For purposes of this subchapter, a reference in any notice required under this subchapter to a product that is being sold or replaced is applicable if the reference could be applicable under any possible circumstances and therefore may not be omitted from the required notice.

(d) An insurer may add a company name and identifying form number to notices specified under this subchapter.

§3.9504. Consumer Notice Regarding Replacement for Insurers Using Agents.

(a) An agent who initiates an application for a life insurance policy or annuity contract shall submit to the insurer, with or as part of the application, a statement signed by both the applicant and the agent as to whether the applicant has existing life insurance policies or annuity contracts.

(b) If the applicant states that the applicant does have existing policies or contracts, the agent shall present and read to the applicant, not later than at the time of taking the application, a notice regarding replacement that contains the text contained in Figure: 28 TAC §3.9504(b). The notice shall be signed by both the applicant and the agent attesting that the notice has been read aloud by the agent or that the applicant did not wish the notice to be read aloud, in which case the agent is not required to read the notice aloud.
Figure: 28 TAC §3.9504(b)

§3.9505. Direct Response Consumer Notices.

(a) In the case of a life insurance or annuity application initiated as a result of a direct response solicitation, the insurer shall inquire whether the applicant, by applying for the proposed policy or contract, intends to replace, discontinue, or change an existing life insurance policy or annuity contract. The inquiry may be included with, or submitted as a part of, each completed application for such policy or contract.

(1) If the insurer has proposed the replacement or if the applicant indicates a replacement is intended and the insurer continues with the replacement, the insurer shall send a notice that contains the text in Figure: 28 TAC §3.9505(a)(1).
Figure: 28 TAC §3.9505(a)(1)

(2) If the applicant indicates a replacement or change is not intended or if the applicant fails to respond to the statement, the insurer shall send the applicant, with the policy or contract, a new policy or contract notice that contains the statements in Figure: 28 TAC 3.9505(a)(2).
Figure: 28 TAC §3.9505(a)(2)

§3.9506. Texas Department of Insurance Consumer Advisory.

(a) Effective April 1, 2008, the text in Figure: 28 TAC §3.9504(b) and Figure: 28 TAC §3.9505(a)(1) must be prefaced with the text in Figure: 28 TAC §3.9506(b).

(b) The text in Figure: 28 TAC §3.9506(b) may be printed on a separate piece of paper or printed on the same piece of paper as the text in Figure: 28 TAC §3.9504(b) or Figure: 28 TAC §3.9505(a)(1) of this subchapter, but in either case the text in Figure: 28 TAC §3.9506(b) must meet the requirements of §3.9503.
Figure: 28 TAC §3.9506(b)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on October 15, 2007.

TRD-200704894
Gene C. Jarmon
General Counsel and Chief Clerk
Texas Department of Insurance
Earliest possible date of adoption: November 25, 2007
For further information, please call: (512) 463-6327

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PART 2. TEXAS DEPARTMENT OF INSURANCE, DIVISION OF WORKERS' COMPENSATION

CHAPTER 134. BENEFITS--GUIDELINES FOR MEDICAL SERVICES, CHARGES, AND PAYMENTS

SUBCHAPTER E. HEALTH FACILITY FEES

28 TAC §134.402

The Texas Department of Insurance, Division of Workers' Compensation (Division) proposes amendments to §134.402 concerning the Ambulatory Surgical Center (ASC) Fee Guideline. These amendments are necessary to maintain the stability of the ASC reimbursement rates during the period the Division develops a new ASC fee guideline in order to address new changes in Medicare's ASC reimbursement methodology.

With Labor Code §413.011, the Texas Workers' Compensation Act (Act) establishes the requirements for Division fee guidelines for medical services. The statute requires the Division to adopt health care reimbursement policies and guidelines that reflect reimbursement structures found in other health care delivery systems with minimal modifications as necessary to meet occupational injury requirements. In addition, the statute requires that fee guidelines be fair and reasonable and designed to ensure the quality of medical care and to achieve effective medical cost control. The Division is to adopt the most current reimbursement methodologies, models, and values or weights used by the Centers for Medicare and Medicaid Services (CMS) in order to achieve standardization. Additionally, Labor Code §413.0511(b)(1) requires consultation with the Medical Advisor in developing, reviewing, and maintaining guidelines. These requirements have been taken into consideration in the development of this proposal. This proposed section does not apply to political subdivisions with contractual relationships under Labor Code §504.053(b)(2).

The current version of §134.402 was developed pursuant to the requirements of the Act and was based on the Medicare ASC reimbursement methodology in place at the time. The Medicare

methodology in place at that time prospectively established a set payment amount for each type of facility service that CMS determined would be reimbursed in an ASC setting. These services were divided into nine specific categories or ASC groups. Beginning in January of 2008, the list of procedures eligible for payment under the Medicare ASC payment system will be greatly expanded. In addition, the limited fee schedule based on nine disparate payment groups will move to a payment system incorporating relative payment weights for groups of procedures with similar resource and clinical characteristics, based on the Ambulatory Payment Classifications that are key elements of the Outpatient Prospective Payment System. Medicare's new ASC payment system makes significant changes in the methodology used to determine ASC reimbursement, such as including reimbursement for high cost devices and surgically implanted devices in the procedure reimbursement amount.

Currently §134.402 provides for ASCs to be paid at 213.3% of the Medicare ASC reimbursement amount. In addition, §134.402 requires surgically implanted devices to be reimbursed separately at the amount actually paid for the device by the ASC.

Section 134.402 currently provides that coding, billing, reporting, and reimbursement of ASC facility services covered by the rule are to be accomplished by applying the Medicare policies in effect on the date a service is provided. This provision was included to prevent the Texas workers' compensation system from falling out of synchronization with Medicare and to achieve the standardization goals established in §413.011 of the Act. However, with the significant changes in Medicare's ASC reimbursement system, if this provision of §134.402 remains in place, the result will be application of the 213.3% payment adjustment factor to the new Medicare ASC reimbursement system. In some instances this may result in unreasonable reimbursements. If 213.3% is applied to the new methodology, the reimbursement for some typical workers' compensation ASC services would range between 199% to 362% of 2007 Medicare rates. For example, reimbursement for CPT code 64476 (injection to the lumbar or sacral area, each additional level), could decrease from $710 to $663, or 199% of 2007 Medicare rates; and reimbursement for CPT code 29826 (shoulder arthroscopy), could increase from $1,088 to $1,848, or 362% of 2007 Medicare rates. Additionally, for surgically implanted device intensive procedures, some reimbursements would increase up to 5709% of the 2007 Medicare rates. For example, reimbursement for CPT code 61886 (implant of neurostimulator arrays), could increase from $1,088 to $29,114, or 5709% of 2007 Medicare rates. Additional separate reimbursement of implantables as currently required by §134.402 would push this rate even higher. This could lead to shifting sites of service for financial rather than clinical reasons to the detriment of injured employees and the Texas workers' compensation system overall.

The proposed amendments to §134.402 extend the use of the current 2007 Medicare reimbursement methodology for services provided on or after January 1, 2008 through August 31, 2008. This will allow time for the Division and system participants to thoroughly research Medicare's new reimbursement methodology so that it can be integrated into the Texas workers' compensation system in a manner that provides reasonable reimbursement for all services in the system, while assuring system participants of a timeline for implementation of the new Medicare methodologies. Future amendments to §134.402 will later be coordinated with the proposal of new §134.403, Hospital Facility Fee Guideline - Outpatient, in order to maintain the consistency established in the Medicare reimbursement systems for outpatient and ASC services.

Consistent with the statutory directives in Labor Code §413.011, the reimbursement levels and fee guideline established in current §134.402 use the Medicare reimbursement structure as a baseline, or reference point, for the maximum allowable reimbursement calculations for services provided in an ASC health care facility. However, the ASC fee guideline was not based solely on the Medicare reimbursements. In setting the ASC fees in this rule, Medicare fees were used as a reference and commercial market payments were considered as indicative of economic indicators in health care, as also required by the statute. The adoption of the ASC payment adjustment factor (PAF) of 213.3% was based upon due consideration of all of the statutory requirements for fee guidelines and the current Medicare reimbursement methodology for ASC services.

At the time of the adoption of the Division's ASC fee guideline, outpatient hospital and ASC payments were not standardized in the Medicare system, or in the market in general. Medicare's new ASC schedule is a move toward standardizing the reimbursement methodologies of these two types of facilities by changing the ASC methodology to be more like that of the outpatient hospital reimbursement methodology. This is a significant change in the Medicare ASC schedule and the current PAF in §134.402 is not compatible with this new methodology. Time is needed to reevaluate all of the data and information, and to analyze the effects of the new Medicare ASC reimbursement methodology on workers' compensation reimbursements in order to make the appropriate recommended transition to the new Medicare reimbursement methodology for ASCs. The proposed rule amendments will continue the use of reimbursement structures and amounts at the Medicare ASC 2007 rates for services provided on January 1, 2008 through August 31, 2008. This will maintain the stability of the ASC reimbursement rates during the period a new ASC fee guideline utilizing the new Medicare ASC methodology is being developed.

A proposed amendment to §134.402(a)(2) states that the section shall not apply to facility services provided by an ASC on or after September 1, 2008. Proposed amendments to §134.402(a)(3) change a reference from "Texas Workers' Compensation Commission (commission)" to "Texas Department of Insurance, Division of Workers' Compensation (Division)" and change "commission" to "Division." A proposed amendment to §134.402(a)(4) adds the words "except as provided in subsection (b) of the section" to a provision in the paragraph that requires use of revised Medicare components for compliance with the section. The proposed amendment to subsection (a)(4) also changes "commission" to "Division."

Proposed amendments to §134.402(b) insert the word "and" between the words "billing" and "reporting," and also remove the word "and reimbursement." The proposed amendment to subsection (b) also removes the words "reimbursement methodologies, models, and values or weights including its" and the word "payment." The proposed amendment to subsection (b) also adds the requirement that for reimbursement of facility services covered in the rule, Texas workers' compensation system participants shall apply the reimbursement provisions of the section and the Medicare program reimbursement methodologies, models, and values or weights that were in effect on the earlier of the date a service is provided or December 31, 2007.

A proposed amendment to §134.402(e)(3)(D) changes "commissioner" to "Division."

Proposed amendments to §134.402(f) changes a reference from "§133.302 and §133.303 of this title (relating to Preparation for an Onsite Audit and Onsite Audits)" to "§133.230 of this title (relating to Insurance Carrier Audit of a Medical Bill)" and changes the reference to §133.307 of this title from "(relating to Medical Dispute Resolution of a Medical Fee Dispute)" to "(relating to MDR of Fee Disputes)."

Jaelene Fayhee, Commissioner of Workers' Compensation Special Assistant, has determined that for each year of the first five years the proposed sections will be in effect, there will be no fiscal impact to state and local governments as a result of the enforcement or administration of the rule. There will be no measurable effect on local employment or the local economy as a result of the proposal.

Ms. Fayhee has also determined that for each year of the first five years the sections are in effect, the public benefit anticipated as a result of the proposed sections is that it will not yet be necessary for system participants to change current reimbursement processes and systems. The system benefits from a measured and controlled implementation of new and significant Medicare reimbursement methodology changes.

Injured employees will benefit from continued access to ASC services and stability of the system.

All system participants will benefit by maintaining the consistency of current administrative and reimbursement processes until a measured and controlled implementation of the new Medicare reimbursement processes are integrated into the Texas workers' compensation system.

There will be no economic cost to persons required to comply with the sections because the amendment continues the current ASC reimbursement system. No changes in processes or systems will be required. Because reimbursements for ASC services will remain the same, some services will not be increased or decreased in accordance with the new Medicare ASC reimbursement methodology changes.

There will be no difference in the cost of compliance between a large and small business as a result of the proposed sections. Based upon the cost of labor per hour, there is no disproportionate economic impact on small or micro-businesses. Even if the proposed sections would have an adverse effect on small or micro-businesses, it is neither legal nor feasible to waive the provisions of the proposed sections for small or micro-businesses because the Labor Code requires equal application of these provisions to all affected individuals.

The Division has determined that no private real property interests are affected by this proposal and that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking or require a takings impact assessment under the Government Code §2007.043.

To be considered, written comments on the proposal must be received no later than 5:00 p.m. on November 26, 2007. Comments may be submitted via the Internet through the Division's Internet website at *http://www.tdi.state.tx.us/wc/rules/proposedrules/toc.html* or by mailing or delivering your comments to Victoria Ortega, Legal Services, MS-4D, Texas Department of Insurance, Division of Workers' Compensation, 7551 Metro Center Drive, Suite 100, Austin, Texas 78744.

If substantial written comments are received, the Division will schedule a public hearing in the Tippy Foster Room, Division of Workers' Compensation, 7551 Metro Center Drive, Austin, Texas to consider the proposal of this rule. Any request for a public hearing must be submitted separately to the Office of General Counsel by 5:00 p.m. on November 26, 2007. If a hearing is held, written and oral comments presented at the hearing will be considered.

The amendments are proposed under the Texas Labor Code §§408.021, 413.002, 413.007, 413.011, 413.012, 413.013, 413.014, 413.015, 413.016, 413.017, 413.019, 413.031; 413.0511, 402.0111, and 402.061. Section 408.021 entitles injured employees to all health care reasonably required by the nature of the injury as and when needed. Section 413.002 requires the Division to monitor health care providers, insurance carriers and claimants to ensure compliance with Division rules. Section 413.007 sets out information to be maintained by the Division. Section 413.011 mandates that the Division by rule establish medical reimbursement policies and guidelines. Section 413.012 requires review and revision of the medical policies and fee guidelines at least every two years. Section 413.013 requires the Division by rule to establish programs related to health care treatments and services for dispute resolution, monitoring, and review. Section 413.014 requires preauthorization by the insurance carrier for health care treatments and services. Section 413.015 requires insurance carriers to pay charges for medical services as provided in the statute and requires that the Division ensure compliance with the medical policies and fee guidelines through audit and review. Section 413.016 provides for refund of payments made in violation of the medical policies and fee guidelines. Section 413.017 provides a presumption of reasonableness for medical services fees that are consistent with the medical policies and fee guidelines. Section 413.019 provides for payment of interest on delayed payments refunds or overpayments. Section 413.031 provides a procedure for medical dispute resolution. Section 413.0511 requires the Medical Advisor to make recommendations regarding the adoption of rules and policies to develop, maintain, and review guidelines as provided by § 413.011. Section 402.00111 provides that the Commissioner of workers' compensation shall exercise all executive authority, including rulemaking authority, under the Labor Code and other laws of this state. Section 402.061 provides that the Commissioner of workers' compensation has the authority to adopt rules as necessary to implement and enforce the Texas Workers' Compensation Act.

The following sections are affected by this proposal: Labor Code §§408.021, 413.002, 413.007, 413.011, 413.012, 413.013, 413.014, 413.015, 413.016, 413.017, 413.019, 413.031; 413.0511, 402.0111, and 402.061.

§134.402. Ambulatory Surgical Center Fee Guideline.

(a) Applicability of this rule is as follows:

(1) This section applies to facility services provided by an ambulatory surgical center (ASC), other than professional medical services.

(2) This section applies to facility services provided by an ASC on or after September 1, 2004. The provisions of subsection (e)(2), (3), and (4), and subsection (f) of this section apply to facility services provided by an ASC on or after April 1, 2005. This section shall not apply to facility services provided by an ASC on or after September 1, 2008.

(3) Specific provisions contained in the Texas Workers' Compensation Act (Act) or Texas Department of Insurance, Division of Workers' Compensation (Division) [~~Texas Workers' Compensation~~

~~Commission (commission)~~] rules, including this rule, shall take precedence over any conflicting provision adopted or utilized by the Centers for Medicare and Medicaid Services (CMS) in administering the Medicare program. Exceptions to Medicare payment policies for medical necessity may be provided by Division [~~commission~~] rule. Independent Review Organization (IRO) decisions regarding medical necessity are made on a case-by-case basis. The Division [~~commission~~] will monitor IRO decisions to determine whether Division [~~commission~~] rulemaking action would be appropriate.

(4) Except as provided in subsection (b) of this section, whenever [~~Whenever~~] a component of the Medicare program is revised and effective, use of the revised component shall be required for compliance with Division [~~commission~~]rules, decisions and orders for services rendered on or after the effective date of the revised component.

(b) For coding, billing, and reporting, [~~and reimbursement~~] of facility services covered in this rule, Texas workers' compensation system participants shall apply the Medicare program [~~reimbursement methodologies, models, and values or weights including its~~] coding, billing, and reporting [~~payment~~] policies in effect on the date a service is provided with any additions or exceptions in this section. For reimbursement of facility services covered in this rule, Texas workers' compensation system participants shall apply the reimbursement provisions of this section and the Medicare program reimbursement methodologies, models, and values or weights that were in effect on the earlier of the date a service is provided or December 31, 2007.

(c) To determine the maximum allowable reimbursement (MAR) for a particular service, system participants shall apply the Medicare payment policies for these services and the Medicare ASC reimbursement amount multiplied by 213.3%.

(d) In all cases, reimbursement shall be the lesser of the:

(1) MAR amount regardless of billed amount; or

(2) facility's and payer's workers' compensation negotiated and/or contracted amount that applies to the billed service(s).

(e) Exceptions and modifications to the Medicare payment policies are as follows:

(1) Whenever Medicare requires a payment policy change to be retroactive, that change shall only apply to services provided on or after the date of that change.

(2) In addition to the ASC List of Medicare Approved Procedures, the following procedures will be reimbursed when provided in an ASC at the reimbursement rate provided by this section as if they were on that list (using the same Medicare group assignment values):

(A) 11750 - Group 1

(B) 11760 - Group 1

(C) 20552 - Group 1

(D) 20526 - Group 1

(E) 27599 - Group 1

(F) 29873 - Group 3

(G) 29999 - Group 4

(H) 63030 - Group 6

(I) 64405 - Group 1

(J) 64999 - Group 1

(3) If a service is not included on the ASC List of Medicare Approved Procedures or listed in subsection (e)(2) of this section, the insurance carrier (carrier), health care provider, and ASC may agree to an ASC setting as follows:

(A) The agreement may occur before, during, or after preauthorization.

(i) A preauthorization request may be submitted for an ASC setting only if an agreement has already been reached and a copy of the signed agreement is filed as a part of the preauthorization request.

(ii) A preauthorization request or approval for a non-ASC facility setting may be revised to an ASC setting by written agreement of the carrier and the health care provider during or after preauthorization.

(B) The agreement between the carrier and the ASC must be in writing, in clearly stated terms, and include:

(i) the reimbursement amount;

(ii) any other provisions of the agreement; and

(iii) names, titles and signatures of both parties with dates.

(C) Copies of the agreement are to be kept by both parties.

(D) Upon request of the Division [~~commission~~], the agreement information shall be submitted in the form and manner prescribed by the Division [~~commission~~].

(4) The carrier shall reimburse all surgically implanted, inserted, or otherwise applied devices at the lesser of the manufacturer's invoice amount or the net amount (exclusive of rebates and discounts) actually paid for such device to the manufacturer by the ASC. Provider billing shall include a certification that the amount sought represents its actual cost (net amount, exclusive of rebates and discounts). That certification shall include the following sentence: "I hereby certify under penalty of law that the following is the true and correct actual cost to the best of my knowledge."

(f) A carrier may use the audit process under §133.230 of this title (relating to Insurance Carrier Audit of a Medical Bill) [~~§133.302 and §133.303 of this title (relating to Preparation for an Onsite Audit and Onsite Audits)~~] to seek verification that the amount certified under subsection (e)(4) of this section properly reflects the actual cost standard contained in that subsection. Such verification may also take place in the Medical Dispute Resolution process under §133.307 of this title (relating to MDR of Fee Dispute) [~~(relating to Medical Dispute Resolution of a Medical Fee Dispute)~~], if that process is properly requested.

(g) Where any terms or parts of this section or its application to any person or circumstance are determined by a court of competent jurisdiction to be invalid, the invalidity does not affect other provisions or applications of this section that can be given effect without the invalidated provision or application.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on October 15, 2007.

TRD-200704893

Norma Garcia
General Counsel
Texas Department of Insurance, Division of Workers' Compensation
Earliest possible date of adoption: November 25, 2007
For further information, please call: (512) 804-4715

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 17. STATE PENSION REVIEW BOARD

CHAPTER 601. GENERAL PROVISIONS

40 TAC §601.60

The State Pension Review Board (hereafter referred to as the Board) hereby proposes new §601.60, concerning the procedure for submission, consideration, and disposition of rule petitions to the Board. Section 601.60 provides for how the Board considers rule petitions, either by initiating rulemaking procedures or by denying the petition in writing. New §601.60 is necessary to implement state agency rulemaking procedures in accordance with the Texas Administrative Procedure Act (APA), Chapter 2001 of the Texas Government Code.

Mr. Ben Armendariz, Accountant for the Board, has determined that for each year of the first five years the proposed new section shall be in effect, there will be no fiscal impact to state or local governments as a result of the enforcement or administration of the new section. There shall be no measurable effect on small or micro businesses. There are no anticipated economic costs to persons who are required to comply with the new section as proposed.

Ms. Virginia Smith, Executive Director of the State Pension Review Board, has determined that for each year of the first five years the new section is in effect, the public benefit anticipated as a result of the proposed new section allows the public to petition the Board to request the adoption of a rule.

Written comments on the proposal may be submitted to Ms. Lynda Baker, Texas Register Liaison, State Pension Review Board, via mail to P.O. Box 13498, Austin, Texas 78711, or electronically to *prb@prb.state.tx.us* no later than 5:00 p.m. CST within 30 days of publication of this proposal in the *Texas Register.*

The new section is proposed pursuant to the authority provided under Texas Government Code §801.201(a) which provide as follows: §801.201(a) requires the Board to adopt rules for the conduct of its business. And in accordance with Texas Government Code §2001.021(b) which states, a state agency by rule shall prescribe the form for a petition under this section and the procedure for its submission, consideration, and disposition.

No other code, article, or statute is affected by this proposal.

§601.60. Petition for Adoption of Rules.

Petitions. Any interested person may submit a written petition to the executive director or the Board of Trustees requesting the adoption of a rule. Within 60 days of the receipt of the petition, the executive director will either:

(1) Send written reasons to the interested party stating the reasons for not submitting the matter to rulemaking proceedings; or

(2) Initiate rulemaking procedures as governed by the Texas Government Code, Chapter 2001.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on October 9, 2007.

TRD-200704792
Lynda Baker
Executive Assistant
State Pension Review Board
Earliest possible date of adoption: November 25, 2007
For further information, please call: (512) 463-1736

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WITHDRAWN RULES

Withdrawn Rules include proposed rules and emergency rules. A state agency may specify that a rule is withdrawn immediately or on a later date after filing the notice with the Texas Register. A proposed rule is withdrawn six months after the date of publication of the proposed rule in the Texas Register if a state agency has failed by that time to adopt, adopt as amended, or withdraw the proposed rule. Adopted rules may not be withdrawn. (Government Code, §2001.027)

TITLE 22. EXAMINING BOARDS

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PART 23. TEXAS REAL ESTATE COMMISSION

CHAPTER 535. GENERAL PROVISIONS

SUBCHAPTER E. REQUIREMENTS FOR LICENSURE

22 TAC §535.51

The Texas Real Estate Commission withdraws the emergency amendments to §535.51 which appeared in the August 24, 2007, issue of the *Texas Register* (32 TexReg 5240).

Filed with the Office of the Secretary of State on October 9, 2007.

TRD-200704828
Loretta R. DeHay
General Counsel and Assistant Administrator
Texas Real Estate Commission
Effective date: October 9, 2007
For further information, please call: (512) 465-3900

SUBCHAPTER R. REAL ESTATE INSPECTORS

22 TAC §535.212

The Texas Real Estate Commission withdraws the emergency amendments to §535.212 which appeared in the August 24, 2007, issue of the *Texas Register* (32 TexReg 5244).

Filed with the Office of the Secretary of State on October 11, 2007.

TRD-200704858
Loretta R. DeHay
General Counsel and Assistant Administrator
Texas Real Estate Commission
Effective date: October 11, 2007
For further information, please call: (512) 465-3900

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ADOPTED RULES

Adopted rules include new rules, amendments to existing rules, and repeals of existing rules. A rule adopted by a state agency takes effect 20 days after the date on which it is filed with the Secretary of State unless a later date is required by statute or specified in the rule (Government Code, §2001.036). If a rule is adopted without change to the text of the proposed rule, then the *Texas Register* does not republish the rule text here. If a rule is adopted with change to the text of the proposed rule, then the final rule text is included here. The final rule text will appear in the Texas Administrative Code on the effective date.

TITLE 10. COMMUNITY DEVELOPMENT

PART 6. OFFICE OF RURAL COMMUNITY AFFAIRS

CHAPTER 257. EXECUTIVE COMMITTEE FOR OFFICE OF RURAL COMMUNITY AFFAIRS

SUBCHAPTER H. RURAL TECHNOLOGY CENTER GRANT PROGRAM

10 TAC §§257.501 - 257.508

The Office of Rural Community Affairs (office) adopts new Chapter 257, Subchapter H, §§257.501 - 257.508 concerning the Rural Technology Center Grant Program, without changes to the proposed text as published in the August 17, 2007, issue of the *Texas Register* (32 TexReg 5133). The text of the rules will not be republished.

The new sections are adopted, in part, to implement the requirements of House Bill 2235 enacted by the 80th Texas Legislature. The purpose of the adopted new rules is to award grants to public institutions of higher education, public high schools, and governmental entities located in rural counties.

No comments were received regarding adoption of the new rules.

The new sections are adopted under §487.052 of the Texas Government Code, which provides the executive committee with the authority to adopt rules concerning the implementation of the new Office's responsibilities.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on October 12, 2007.

TRD-200704864
Charles S. (Charlie) Stone
Executive Director
Office of Rural Community Affairs
Effective date: November 1, 2007
Proposal publication date: August 17, 2007
For further information, please call: (512) 936-6734

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TITLE 16. ECONOMIC REGULATION

PART 1. RAILROAD COMMISSION OF TEXAS

CHAPTER 9. LP-GAS SAFETY RULES

SUBCHAPTER A. GENERAL REQUIREMENTS

16 TAC §9.10

The Railroad Commission of Texas adopts amendments to §9.10, relating to Rules Examination, without changes to the version published in the August 3, 2007, issue of the *Texas Register* (32 TexReg 4689). The Commission adopts the amendments in conformance with legislative guidance that the Commission recover its costs for providing various regulatory services. The amendments will recover the cost of the LP-gas, CNG, and LNG examination program and eliminate the program's use of state General Revenue funds. The Commission increases the fee for a new employee-level examination to $40 and the fee for a new management-level examination to $70. The current fees for these examinations are $20 and $50, respectively. The fees were last changed in 1999.

The Commission received eight comments from individuals. One commenter asked how long it had been since these fees were increased, how long might it be before they are increased again, and stated that the fees were not unreasonable. The Commission stated in the proposal preamble that the fees had not been changed since 1999, but is unable to predict when the fees might be increased again. This proposal was made to conform the LP-gas, CNG, and LNG examination program with the legislature's general guidance that certain regulatory programs be self-supporting. The Commission reviews all fees to make sure they are reasonable.

Another commenter stated that the 100 percent increase in the employee exam fee and the 40 percent increase in the management exam fee seemed excessive, and stated that with inflation at three percent, any increase over 10 percent did not seem in order. The Commission responds that the reason for the increase is not to keep up with inflation but rather to recover by fees that part of the program's costs that are now paid out of General Revenue. At the current $20 and $50 rate the examination fees recover only about half of the $130,000-$140,000 annual cost of the examination program. At the $40 and $70 rate the examination fees will recover the full cost of the program. The Commission notes that while the percentage increases may seem high, the actual dollar amount of the new exam fees is reasonable. In comparison, a medical gas piping installation endorsement exam fee is $80; the Department of Licensing and Regulation charges $90 for each air conditioning and refrigeration contractor license exam; and the Board of Plumbing Examiners charges $155 for each master plumber examination.

An individual who is a member of the AFRED advisory committee stated that the proposal should have been discussed at the council's June 2007 meeting. He stated that the wording of the proposal gives the appearance that the Commission is a "profit center" for the State of Texas and objected to that. The commenter was in favor of a fee increase based on increased operating costs for development, production, and proctoring of the examinations, but opposed a fee increase that was not tied to a quantifiable cost. He also stated support for the certification process because it makes the LP-gas industry and customers safe, but did not want to see the costs of funding the operation of the Commission placed on the LP-gas retailers. The commenter recommended that more supporting information be provided to LP-gas retailers prior to an increase in fees, especially justification for an examination fee increase of 100 percent. The commenter stated that if increased examination costs were the reason for the fee increase, then the LP-gas industry might feel less a victim of legislative bureaucracy, but if the fee increased is to offset other operating expenses of the Commission, then the fee increase is unacceptable. The commenter stated that the LP-gas retailers in Texas should not be the source of funding for a state agency that they were not responsible for creating, and if the legislature is not properly funding the operating costs of the Commission, that should be an issue for the legislature and not the LP-gas retailers.

The Commission responds that all of the revenue generated by the fee increase will be used to recover the cost of the examination program; none of this revenue will be used for other programs. The statement that the Commission is a "profit center" for the State of Texas is erroneous because all fees generated from the examinations go directly to the examination program and are not used for any other purposes. The legislature has over the past several years required that the regulatory programs of state agencies, including the Commission's, be self-sustaining through fees generated by those programs. Many of the Commission's regulatory programs besides its LP-gas regulatory program have been directed by the legislature to use appropriated receipts instead of General Revenue.

Over several recent legislative sessions, the legislature has required that many state agencies' regulatory programs, including the Commission's, be self-sustaining through fees generated by their programs. The legislature has directed that the Commission's other regulatory programs use appropriated receipts instead of General Revenue to cover program costs, so this issue is not unique to the regulation of the LP-gas industry. The Commission may not expend any greater amount than has been appropriated to it, and if the revenue collections are not sufficient to offset the costs of the program, the Comptroller may reduce the Commission's contingent appropriation to the amount reasonably expected to be available. There is no possibility that the Commission will receive more money than has been appropriated to it, and it could receive less. There is no profit to the Commission.

Another individual stated that the Commission did not understand the burden placed on small dealers, and that a small dealer cannot afford to send an employee for two weeks to get a Category E certification. The commenter said certification should revert back to more on-the-job training with limited class time and a series of tests. The commenter stated that the fee increase was a way for the large dealers to push the small dealers out of the market. The Commission fully understands the financial burden that may affect small dealers, but the legislature and the statutes do not allow the Commission to treat small dealers any differently than other dealers.

Another commenter stated he has been in the LP-gas business since 1960 and is against the fee increase. The Commission disagrees with the comment, but appreciates the commenter's interest in the rules.

A commenter stated that the fee increase would be acceptable if the industry was getting quality instruction from the commission. The commenter has had difficulty retaining drivers because they can make high wages in the oilfield services industry. She stated that past certification classes were not worthwhile, having sent three employees who reported that they had not learned anything. The commenter pointed out that when a company has only three employees and one is gone to a class, 30 percent of the work force is lost for that day.

The Commission notes that the amendments relate solely to LP-gas, CNG, and LNG examination program, not to the Commission's training program, which is separately funded. The amendments will not affect the training classes or require employees to attend classes more frequently. Nevertheless, the Commission regrets the commenter's employees' bad experience at training classes and will continue to strive to offer quality training at reasonable cost. The Commission has no control over wages paid in the LP-gas industry or the oil and gas industry.

Another commenter stated that it is a good idea any time an agency can be strengthened to help the industry and was in favor of the fee increases. The commenter asked how the extra funds would be used, and requested more classes in the north Texas area (other than the Dallas area). The commenter also suggested that an employee should be able to take the examination following the class instead of having to drive to a separate location to do so.

The Commission notes that the preamble to the proposed amendments stated that the fee increases would be used to fund the exam program, and that they were required because of legislative policy. The Commission also notes that examinations are offered after many classes. However, all LP-gas classes outside of Austin are held at donated facilities to keep costs low. In cases where the owner of the donated facility is not able to keep the building open long enough to hold an examination in the same location, the examination may have to be offered at a different location or time, such as the next morning. The Commission also notes that the rules allow LP-gas licensees to request classes in their areas of the state; AFRED reviews all such requests and attempts to accommodate them wherever possible.

Another comment strongly objected to the fee increases of 40 percent and 100 percent, and stated that the Texas Propane Gas Association had calculated that the exam fees would increase from $73,000 to over $140,000, which was unreasonable and exorbitant. The commenter stated that since AFRED took over the testing activities from the LP-Gas Division three years ago, the service level for examinations has fallen, they are offered at fewer locations, on fewer dates, and with more restrictions on times. The commenter for these reasons stated the fee increase seemed to be a plan to generate revenue for other areas of AFRED's operations.

The Commission responds that the increased fees will fund only the examination program and will recover that program's full cost consistent with legislative direction. The amounts of the increases were calculated to accomplish that purpose. The

Commission further responds that the commenter's claims concerning the level of examination service since the program's transfer to AFRED are not correct. Since the program was transferred to AFRED on December 1, 2004, the Commission has continued to offer examinations every business day in Austin; increased the number of examination locations statewide from five to 26; and increased the number of examination dates outside Austin from one or two days a month to an average of 13 days a month.

The Commission adopts the amendments under Texas Natural Resources Code, §113.051, which authorizes the Commission to adopt rules relating to any and all aspects or phases of the LP-gas industry that will protect or tend to protect the health, welfare, and safety of the general public, and §113.088, which requires the Commission to establish reasonable examination fees.

Statutory authority: Texas Natural Resources Code, §113.051 and §113.088.

Cross reference to statute: Texas Natural Resources Code, Chapter 113; §113.051 and §113.088.

Issued in Austin, Texas, on October 9, 2007.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on October 9, 2007.

TRD-200704797
Mary Ross McDonald
Managing Director
Railroad Commission of Texas
Effective date: October 29, 2007
Proposal publication date: August 3, 2007
For further information, please call: (512) 475-1295

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CHAPTER 13. REGULATIONS FOR COMPRESSED NATURAL GAS (CNG)
SUBCHAPTER C. CLASSIFICATION, REGISTRATION, AND EXAMINATION

16 TAC §13.70

The Railroad Commission of Texas adopts amendments to §13.70, relating to Examination Requirements and Renewals, without changes to the version published in the August 3, 2007, issue of the *Texas Register* (32 TexReg 4696). The Commission adopts the amendments in response to legislative directives that the Commission recover its costs for providing various services. The amendments will recover the cost of the LP-gas, CNG, and LNG examination program and eliminate the program's use of state General Revenue funds. The Commission increases the fee for a new employee-level examination to $40 and the fee for a new management-level examination to $70. The current fees for these examinations are $20 and $50, respectively. The fees were last changed in 1999.

The Commission received no comments on the proposal.

The Commission adopts the amendments under the Texas Natural Resources Code, §116.012, which requires the Commission to adopt necessary rules and standards relating to the work of compression and liquefaction, storage, sale or dispensing, transfer or transportation, use or consumption, and disposal of compressed natural gas or liquefied natural gas to protect the health, safety, and welfare of the general public; and §116.034, which authorizes the Commission to adopt a reasonable fee to cover the cost of any examination required by and sponsored or administered by the Commission.

Statutory authority: Texas Natural Resources Code, §116.012 and §116.034.

Cross reference to statute: Texas Natural Resources Code, Chapter 116; §116.012 and §116.034.

Issued in Austin, Texas, on October 9, 2007.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on October 9, 2007.

TRD-200704796
Mary Ross McDonald
Managing Director
Railroad Commission of Texas
Effective date: October 29, 2007
Proposal publication date: August 3, 2007
For further information, please call: (512) 475-1295

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CHAPTER 14. REGULATIONS FOR LIQUEFIED NATURAL GAS (LNG)
SUBCHAPTER A. GENERAL APPLICABILITY AND REQUIREMENTS

16 TAC §14.2019

The Railroad Commission of Texas adopts amendments to §14.2019, relating to Certification Requirements, without changes to the version published in the August 3, 2007, issue of the *Texas Register* (32 TexReg 4698). The Commission adopts the amendments in response to legislative directives that the Commission recover its costs for providing various services. The amendments will recover the cost of the LP-gas, CNG, and LNG examination program and eliminate the program's use of state General Revenue funds. The Commission increases the fee for a new employee-level examination to $40 and the fee for a new management-level examination to $70. The current fees for these examinations are $20 and $50, respectively. The fees were last changed in 1999.

The Commission received no comments on the proposal.

The Commission adopts the amendments under the Texas Natural Resources Code, §116.012, which requires the Commission to adopt necessary rules and standards relating to the work of compression and liquefaction, storage, sale or dispensing, transfer or transportation, use or consumption, and disposal of compressed natural gas or liquefied natural gas to protect the health, safety, and welfare of the general public; and §116.034, which authorizes the Commission to adopt a reasonable fee to cover the cost of any examination required by and sponsored or administered by the Commission.

Statutory authority: Texas Natural Resources Code, §116.012 and §116.034.

Cross reference to statute: Texas Natural Resources Code, Chapter 116; §116.012 and §116.034.

Issued in Austin, Texas, on October 9, 2007.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on October 9, 2007.

TRD-200704795
Mary Ross McDonald
Managing Director
Railroad Commission of Texas
Effective date: October 29, 2007
Proposal publication date: August 3, 2007
For further information, please call: (512) 475-1295

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PART 2. PUBLIC UTILITY COMMISSION OF TEXAS

CHAPTER 25. SUBSTANTIVE RULES APPLICABLE TO ELECTRIC SERVICE PROVIDERS

SUBCHAPTER E. CERTIFICATION, LICENSING AND REGISTRATION

16 TAC §25.107

The Public Utility Commission of Texas (commission) adopts an amendment to §25.107, relating to Certification of Retail Electric Providers (REPs), with changes to the proposed text as published in the April 13, 2007, issue of the *Texas Register* (32 TexReg 2081). The adopted amendment will permit the commission in certain circumstances to establish additional or different financial requirements for a REP that, together with any affiliates, serves a million or more retail customers in Texas. The amendment will also repeal certain obsolete provisions of the rule. The rule is a competition rule subject to judicial review as specified in Public Utility Regulatory Act (PURA), §39.001(e). This amendment is adopted under Project Number 34039.

The commission received comments on the proposed amendment to §25.107 from AEP Central Company and AEP Texas North Company (together AEP); the Alliance for Retail Markets (ARM) and Reliant Energy, Incorporated (Reliant); CenterPoint Energy Houston Electric, LLC (CenterPoint); Texas Industrial Energy Consumers (TIEC); and TXU Energy Retail Company, LP (TXU). AEP, CenterPoint, and TIEC supported the commission's proposed amendment. Reliant and TXU objected to the amendment with respect to §25.107(c)(2) and (7) as well as §25.107(f); and ARM objected to the amendment with respect to §25.107(c)(2) and (7), but did not take a position on proposed changes in subsection (f) because it did not believe any changes were necessary.

TXU argued that the proposed amendment does not have a reasoned justification because the commission's staff admitted at the commission's March 27 open meeting that it proposed the amendment for the sole purpose of "making it easier" for the commission to review certain aspects of the purchase of TXU Corp. and its various subsidiaries by certain private investors, including Kohlberg, Kravis, Roberts and Company and Texas Pacific Group TXU.

Commission response

TXU was apparently referring to the discussion that occurred at the commission's March 20, 2007 open meeting. The commission's consideration of the transaction described by TXU resulted in the identification of commission rules that could be improved. Although the transaction was a catalyst for the amendment, the amendment addresses broader concerns than just that transaction and affects more REPs that just TXU.

ARM and Reliant, commenting jointly, commented that the proposed amendments to §25.107(c)(2) are not within the commission's statutory authority, either expressly or by virtue of being reasonably necessary to carry out its duties. They argued that allowing the commission to pre-approve changes in REP management or transfers of REP stock--as outlined in the rule--is not within the commission's authority to safeguard customers. Furthermore, they maintained that the legislature had already contemplated, and decided against, giving the commission the authority to pre-approve in instances in which a REP merged, consolidated, or otherwise became affiliated with another REP when PURA §39.158 was initially proposed. ARM and Reliant argued, therefore, that, if the legislature declined to adopt that pre-approval authority, there is no basis to assume that the commission would be granted power to pre-approve any sale-transfer-merger transactions involving the ownership of a REP. Finally, they noted that safeguards are already in place to ensure that REPs are meeting the necessary qualifications for certification.

TXU made comments similar to ARM and Reliant's comments. However, TXU also argued that the proposed amendment is unconstitutionally retroactive to the extent that it would apply to the pending TXU transaction, which would have the effect of depriving parties of substantive and clearly vested rights.

TIEC stated its appreciation for the rationale in the proposed amendment to §25.107(c)(2), but argued that an application of more stringent transfer criteria to Option 2 REPs may not be necessary, as Option 2 customers voluntarily accept more risk.

Commission response

PURA §39.352 provides that, after the date of customer choice, a person may not provide retail electric service in this state unless the person is certified by the commission as a retail electric provider in accordance with that section. The requirements for REP certification pursuant to PURA §39.352(b) include demonstration of the financial and technical resources to provide continuous and reliable electric service to customers in the area for which the certification is sought; the managerial and technical ability to supply electricity at retail in accordance with customer contracts; and the resources needed to meet the customer protection requirements of PURA. The ability of a REP to meet these requirements could be materially affected by a change in control of the REP. Nevertheless, the commission concludes that it is not appropriate to adopt changes in the provisions that deal with transfers of a REP certificate. For this reason, it is not necessary to address TXU's argument concerning retroactivity and TIEC's position with respect to Option 2 REPs. The only change to subsection (c) is to remove an obsolete provision relating to when REPs may file an application for certification. The commission concludes that other changes to subsection (c) that would clarify issues relating to transfers and amendments of REP certificates should be addressed in a subsequent rulemaking proceeding.

ARM and Reliant objected to the proposed amendment of subsection (c)(7), specifically objecting to the determination that "good cause" to extend time for commission review of REP certification exists if a REP and its affiliates together serve one million or more customers. ARM and Reliant argued that the one million customer benchmark is arbitrary and unfairly discriminates against the larger REPs and their affiliates, without reasoned justification for doing so and in violation of PURA's anti-discrimination section for participants in a competitive market.

TXU also objected to the amendments to subsection (c)(7). In addition to ARM and Reliant's arguments, TXU argued that the one million customer threshold could be interpreted to include non-Texas residents--over which the commission would have no jurisdiction--given TXU's interpretation of PURA §11.003, defining "affiliate" in a manner to include non-Texas corporations. Additionally, TXU stated that the size of a customer base bears no necessary relationship to the time required for the commission to review a REP transfer, and that the limitless time available to the commission for such a review is constitutionally impermissible.

Commission response

The commission agrees that it is not appropriate to adopt such a change.

Reliant objected to the amendment to subsection (f). Reliant commented that imposing different standards for REPs based on size and number of customers is arbitrary and serves no justifiable purpose. Furthermore, Reliant stated that current requirements in the rule already assure that any REP meets the financial standards necessary to operate in the market and serve retail customers.

In addition to arguments similar to Reliant's, TXU argued that the proposed amendment to subsection (f) is unconstitutionally vague as written. It argued that the amendment, which could potentially subject a REP to significant penalties, fails to detail any standards or criteria by which the commission will determine additional or different financial requirements. TXU further argued that the amendment does not provide fair notice of what conduct can be punished, granting the commission what it called unbridled discretion.

CenterPoint supported the language related to "additional or different" financial requirements, noting that, due to the fact that the largest REPs have the greatest financial impact, the commission should have more authority to impose additional or different financial requirements on them. CenterPoint estimated that, for a REP with a million residential customers in its service area, its bad debt exposure could be over $100 million if the REP defaulted. In addition, CenterPoint argued that it may be appropriate to consider whether the one million customer threshold should be lowered. CenterPoint also suggested that the one million customer threshold be interpreted to include only customers within the Electric Reliability Council of Texas (ERCOT). AEP agreed with CenterPoint.

TIEC also commented in agreement with the amendment to subsection (f), and stated that the commission has a reasonable basis for treating those REPs that serve a million or more residential customers differently than other REPs. TIEC stated that the default of such a REP on its payments to a transmission and distribution utility (TDU) could affect the TDU's ability to provide continuous and adequate service. TIEC also stated that the default of a REP with a significant customer base affects all ERCOT market participants. When REPs default on amounts owed to ERCOT, ERCOT is likely to charge all market participants the cost of the bad debt. TIEC argued that, because the default of a large REP could adversely affect all ERCOT market participants, there is a reasonable basis and justification for the commission to differentiate between REPs based on size.

Commission response

The commission has clarified that the one million residential customer threshold is for customers in Texas, because the commission is concerned with the magnitude of a REP default in Texas. The commission finds that it is in the public interest to provide to itself the flexibility to impose more stringent financial standards on a REP that, together with any affiliates, serves one million or more residential customers in Texas. As CenterPoint and TIEC pointed out, the impacts on the State of Texas of a failure by such a REP to provide continuous and reliable electric service could be substantial. Such a failure could require the transfer of a large number of customers to providers of last resort (POLRs) over a very short time frame. This would result not only in adverse impacts on the large number of affected customers, but also on the POLRs, who may have difficulty providing service to such a large number of customers, especially on short notice. In addition, the amount of bad debt resulting from the failure could be significant; and most of it could ultimately be paid by other REPs and customers through charges by ERCOT and through rates of the affected TDUs.

In response to TXU's vagueness argument, the commission has added language to subsection (f)(1)(G) to make explicit that the purpose of any different financial requirements is to meet the statutory standard that a REP have the financial resources to provide continuous and reliable electric service to customers in the area for which it is certified.

In written comments, Reliant stated that the proposed rule distinguishes, absent a sound financial basis, between companies that rely upon their own investment-grade rating and those with commitments from entities with investment-grade ratings. Reliant argued that a corporate commitment from a company with an investment-grade rating is just as stable and reliable as a REP's own investment-grade rating. Reliant suggested modifying the language in the proposed amendment to clarify that the commission seeks to apply strict scrutiny to only those REPs serving over one million customers that either do not rely on investment-grade ratings or rely on investment-grade ratings that are subject to a downgrade below investment grade.

To further discuss "safe harbor" financial options for REPs that, together with any affiliates, serve one million or more residential customers in Texas, the commission conducted a workshop on Monday, September 24, 2007. The workshop received participation from AEP, ARM, CenterPoint, Direct Energy (Direct), ERCOT, Reliant, and TXU. The workshop included presentations by ERCOT and TXU, followed by discussion and proposed alternatives regarding the safe harbor financial options.

TXU stated at the workshop that investment-grade credit ratings provide a very good indication of the ability of a firm to access capital and its overall creditworthiness. Direct proposed a minimum investment-grade credit rating of BBB (S&P) or Baa2 (Moody's). Direct argued that one notch above the current standard for all REPs is adequate, because the increased probability of default for BBB compared to BBB+ is negligible. TXU agreed with Direct and noted that BBB provides access to essentially all sources of market capital.

During the workshop, the participants discussed an equity safe harbor option that would require the REP or its parent corporation or controlling shareholder to provide a guaranty to the REP to demonstrate and maintain equity in excess of 120% of the total monthly billings of TDUs (excluding transition charges). Regarding this equity safe harbor option, TXU argued that equity can function as an appropriate "sign-post" indicator that a company may be having liquidity problems. TXU expressed its support for the use of equity as an option rather than the tangible net worth (stockholder's equity less goodwill) calculation used by ERCOT.

During the workshop, the participants also discussed a cash-resource safe harbor option that would require the REP, its parent corporation, or a controlling shareholder to provide a guaranty to the REP to demonstrate and maintain unused cash resources at a level that would be based on the total monthly billings from TDUs (excluding transition charges). In connection with such a cash-resource option, the parties also discussed quarterly reporting to demonstrate compliance and notice of non-compliance. Regarding this safe harbor alternative, TXU, Reliant, and Direct expressed concern that the current standards were being expanded to include wholesale settlement risk and customer deposits. TXU, Reliant, and Direct argued that the inclusion of wholesale settlement risk and customer deposits is duplicative, because wholesale settlement risk is covered by ERCOT creditworthiness standards and customer deposits are covered by §25.107(f)(2).

CenterPoint expressed concern that the proposed cash-resource safe harbor option does not address customer deposits and stated that amounts earmarked in the rules for TDUs have been used to refund customer deposits. CenterPoint argued that the amount of coverage provided by the cash option and access to the cash are equally important issues. CenterPoint stated that its experience with unused cash resources and REP defaults demonstrates that, when a REP goes out of business, it stops paying the TDU and the unused cash resources are used to satisfy other creditors. CenterPoint and AEP argued that at least one month of security, or 100% of the total monthly billings from TDUs (excluding transition charges), should be provided given that the REP is not considered to be in default to the TDU for 45 days.

ARM expressed a general concern that any standards established for large REPs may be applied to smaller REPs in a subsequent rulemaking.

Commission response

The safe harbor provisions adopted in subsection (f)(1)(G) reflect the continued collaboration of commission staff and parties that participated in the workshop. The adopted amendments to subsection (f) gives the commission the discretion to review the financial condition of, and establish different financial requirements for, a REP that, together with any affiliates, serves one million or more residential customers in Texas and does not meet the requirements of subsection (f)(1)(G). The commission concludes that, in the event that a large REP does not meet one of the safe harbor provisions, the public interest is best served by providing to the commission and the REP the flexibility to develop alternative means to balance the REP's interest in providing service and the interest of the public in avoiding excessive risk that the REP will default. In light of the relatively substantial harm that a large REP's default could have on the state, the adopted amendments appropriately give the commission the discretion to establish additional or different financial requirements for such REPs.

The safe harbor provisions require that REPS with one million or more customers meet a significantly higher level of credit quality than that required by the current creditworthiness standards and provide the commission and market participants with a substantially greater degree of assurance regarding the large REPs' financial condition. Additionally, the revised standards require the large REPs to provide early notification of significant changes in financial condition, thereby allowing the commission to respond more quickly and proactively to situations of a REP's declining creditworthiness and the threat of significant financial harm to market participants.

With respect to the specific safe harbor provisions contained in clauses (i), (ii), and (iii) of subsection (f)(1)(G), the adopted amendments require an investment-grade credit rating of BBB or its equivalent, which is one notch above the investment-grade credit rating required by subsection (f)(1)(A)(i). The commission strongly supports the use of credit ratings as a benchmark for the financial condition of large REPs because credit rating agencies possess the information and ability to provide independent and ongoing verification of an entity's ability to satisfy financial obligations and access capital markets. Raising by one notch the required investment-grade credit rating for a REP with one million or more customers provides an additional degree of security regarding the continuing ability of such a REP to access capital and maintain a stable presence in the state's retail electricity market.

The safe harbor provision contained in clause (iv) of subsection (f)(1)(G) allows a large REP to demonstrate credit quality using equity in an amount equal to 300% of the total monthly amounts billed by TDUs (excluding transition charges covered by §25.108) in Texas plus the REP's customer deposits and prepayments. The commission concludes that requiring an equity level of 300% for a large REP provides a sufficiently adequate cushion to address any concerns related to the relative liquidity of reported equity as a creditworthiness benchmark and the ability of the REP to satisfy its financial obligations. For REPs choosing to meet their creditworthiness requirements with this option, the rule requires the filing on a quarterly basis of the financial information necessary to demonstrate compliance.

The safe harbor provision contained in clause (v) of subsection (f)(1)(G) requires the REP to demonstrate unused cash resources in an amount equal to 100% of the total monthly amount of TDU billings (excluding transition charges covered by §25.108) in Texas plus the REP's customer deposits and prepayments. This level of cash resources reflects a significant increase over the current credit standard in subsection (f)(1)(A)(iii), which requires cash coverage of 40% of TDU billings. The commission concludes that, for large REPs relying on the cash-resource standard, these additional requirements are appropriately commensurate with the greater role of large REPs in the state's retail electricity market and provide a substantially greater degree of financial protection for all market participants. Like the equity safe harbor option, the cash-resource option requires REPs to make compliance filings on a quarterly basis.

All comments, including any not specifically referenced herein, were fully considered by the commission. In adopting amended §25.74, the commission makes other changes for the purpose of clarifying its intent.

The amendment is adopted under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 2007) (PURA), which provides the Public Utility Commission with the

authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction; and specifically, PURA §17.004(a)(1), which entitles buyers of retail electric services to protection from fraudulent, unfair, misleading, deceptive, or anticompetitive practices; PURA §39.101(a)(1), which requires that the commission ensure that retail customer protections are established that entitle a customer to safe, reliable, and reasonably priced electricity; PURA §39.101(b)(6), which entitles a customer to be protected from unfair, misleading, or deceptive practices; PURA §39.352, which authorizes the commission to certify a person as a REP who, among other things, has the financial and technical resources to provide continuous and reliable electric service, the managerial and technical ability to supply electricity at retail in accordance with customer contracts, and the resources needed to meet the customer protection requirements of PURA; and PURA §39.356(a), which authorizes the commission to suspend or revoke a REP's certificate if it no longer has the financial or technical capability to provide continuous and reliable electric service.

Cross Reference to Statutes: Public Utility Regulatory Act, §§14.002, 17.004(a)(1), 39.101(a)(1), 39.101(b)(6), 39.352, and 39.356(a).

§25.107. Certification of Retail Electric Providers (REPs).

(a) Application. This section applies to all persons who seek to provide electric service to retail customers in Texas on or after the date of customer choice, as established by Public Utility Regulatory Act (PURA) Chapter 39, or as a provider of retail electric service in the Customer Choice Pilot Projects, as established under PURA §39.104 and §39.405. This section does not apply to the state, political subdivisions of the state, electric cooperatives or municipal corporations, or to electric utilities providing service in an area where customer choice is not in effect. An electric cooperative or municipally owned utility participating in customer choice may offer electric energy and related services at unregulated prices directly to retail customers who have customer choice without obtaining certification as a REP. The statutory mandate for certification of persons who provide retail electric service in this state, provided by PURA §39.352(a), is interpreted to address business functions as follows:

(1) Persons who purchase, take title to, and resell electricity must register as REPs. Persons who do not purchase, take title to, or resell electricity, but perform a service pursuant to a contract with the REP do not need to become certificated as REPS.

(2) A REP may contract to outsource functional requirements specified in this section or other commission rules, however:

(A) the REP remains accountable to applicable laws and commission rules for all activities conducted on its behalf by any subcontractor, agent, or any other entity;

(B) the REP and any of its agents are sellers and seller's agents and may not represent themselves as agents of the buyer's interests; and

(C) all REPs are responsible for providing or contracting for all of the elements necessary to provide continuous and reliable electric service to retail customers as required by commission rules.

(b) Definitions. The following words and terms when used in this section shall have the following meaning unless the context indicates otherwise:

(1) Continuous and reliable electric service--Electric power service provided at retail by a retail electric provider (REP), consistent with the customer's terms and conditions of service, uninterrupted by unlawful or unjustified action or inaction of the REP.

(2) Customer--Any entity who has applied for, has been accepted, or is receiving retail electric service from a REP for use on an end-use basis.

(3) Person--Includes an individual, a partnership of two or more persons having a joint or common interest, a mutual or cooperative association, and a corporation, but does not include an electric cooperative or a municipal corporation.

(4) Retail electric provider--A person that sells electric energy to retail customers in this state. As provided in PURA §31.002(17), a retail electric provider may not own or operate generation assets. As provided in PURA §39.353(b), a REP is not an aggregator.

(5) Revocation--The cessation of all REP business operations in the state of Texas, pursuant to commission order.

(6) Suspension--The cessation of all REP business operations in the state of Texas associated with obtaining new customers, pursuant to commission order.

(c) Application for REP certification.

(1) After the date of customer choice, or as a participant in the Customer Choice Pilot Projects, a person, including an affiliate of an electric utility, may not provide retail electric service in the state unless the person is certified by the commission as a retail electric provider in accordance with PURA §39.352 and this section.

(2) A certificate granted pursuant to this section is not transferable without prior approval by the commission.

(3) An application for certification shall be made on a form approved by the commission, verified by oath or affirmation, and signed by an applicant's owner or partner, or an officer of the applicant. Applications may be obtained in the Central Records division of the Public Utility Commission of Texas during normal business hours, or from the commission's Internet site. Each applicant shall file its application with the commission's Filing Clerk in accordance with the commission's Procedural Rules, Chapter 22, Subchapter E, of this title (relating to Pleadings and Other Documents).

(4) The applicant may identify certain information or documents submitted that it believes to contain proprietary or confidential information. Applicants may not designate the entire application as confidential. Information designated as proprietary or confidential will be treated in accordance with the standard protective order issued by the commission for use with applications for certification as a REP. If and when a public information request is received for information designated as confidential, the applicant or REP has the burden of establishing that information filed pursuant to this rule is proprietary or confidential.

(5) Except where good cause exists to extend the time for review, the presiding officer shall issue an order stating whether an application is deficient or complete within 20 days of filing. Deficient applications and those without necessary supporting documentation will be rejected without prejudice to the applicant's right to reapply.

(6) While the application is pending, an applicant shall inform the commission of any material change in the information provided in the application within ten days of any such change.

(7) The commission will make an effort, where the facts of the case permit, to insure that applications filed simultaneously are resolved simultaneously. Except where good cause exists to extend the time for review, the commission shall enter an order approving, rejecting, or approving an application with modifications within 90 days of filing an application.

(8) A certificate granted pursuant to this section shall continue in force until further order of the commission.

(9) A certificate granted pursuant to this section shall not be construed to vest exclusive service or property rights in and to the area for which the certificate is granted.

(d) REP certification requirements based on service area. As a requisite for obtaining and maintaining certification, a REP must designate a service area defined by either paragraph (1) or (2) of this subsection, and meet the certification requirements designated therein.

(1) Option 1. For REPs defining service areas by geography:

(A) A REP must designate one of the following categories as its geographical service area:

(i) The geographic area of the entire state of Texas; (indicating the zip codes applicable to that area); or

(ii) The service area of specific transmission and distribution utilities, and/or municipal utilities or electric cooperatives in which competition is offered; or

(iii) The geographic area of Electric Reliability Council of Texas (ERCOT) or territory of another independent organization to the extent it is within Texas.

(B) A REP with a geographical service area is subject to all subsections of this section, including those pertaining to administration, financial, technical and managerial, customer protection, and reporting requirements, as applicable.

(C) The commission shall decide whether to grant a certificate to an applicant proposing to provide retail electric service to a geographical service area in Texas based on:

(i) Provision of all of the information required of the applicant in the form, Application for a Certificate to Provide Retail Electric Service, approved by the commission.

(ii) Whether the applicant has met the business name, office, and threshold residential service level requirements specified in subsection (e) of this section.

(iii) Whether the applicant has demonstrated that it possesses the financial and technical resources to provide continuous and reliable electric service to its customers in the area for which certification is sought and the technical and managerial ability to supply electricity at retail in accordance with customer contracts, pursuant to subsections (f) and (g) of this section.

(iv) Whether the applicant has demonstrated that it possesses the resources needed to meet the customer protection requirements, disclosure requirements, and marketing guidelines as specified in subsection (h) of this section.

(v) Whether the configuration of the proposed geographic area, if any, would discriminate in the provision of electric service to any customer because of race, creed, color, national origin, or any other basis prohibited by law or by subsection (h)(1) of this section.

(D) If the presiding officer determines that an applicant does not possess resources sufficient to serve the geographical area designated by the applicant, the presiding officer shall notify the applicant of the deficiencies and allow the applicant to designate a different geographical service area commensurate with its resources. If the applicant designates no suitable area within a reasonable time, the application shall be denied.

(2) Option 2 - For REPs defining service areas by customers. As an alternative to a geographical service area, a REP may define a service area by a specific list of customers, each of whom contract for one megawatt or more of capacity. The applicant shall be certified as a REP only for purposes of serving the named customers.

(A) To obtain certification under this paragraph, an applicant must file with the commission a signed, notarized affidavit from each individual retail customer with which it has contracted to provide one megawatt or more of capacity. The affidavit shall state that the customer is satisfied that the REP meets the financial, technical and managerial, and customer protection standards prescribed in subsections (f)(2), (g), and (h) of this section. The one-megawatt threshold may not be met by aggregation of individual electricity customers.

(B) A REP whose service area is defined by customers shall meet the administrative requirements specified in subsection (e) of this section.

(C) A REP whose service area is defined by customers shall meet the financial requirements for billing and collection of transition charges pursuant to subsection (f)(3) of this section, if applicable.

(D) The commission will grant a certificate to an applicant under this paragraph upon a finding that the affidavits for each designated customer have been received and that all requirements of this paragraph are met.

(E) A REP certified pursuant to this paragraph may be authorized to serve additional customers by amending its certificate pursuant to subsection (i)(6) of this section.

(F) A REP certified pursuant to this paragraph is subject to reporting requirements specified in subsection (i) of this section.

(e) Administrative requirements. As a requisite for obtaining and maintaining certification, a REP must meet the following requirements concerning business names and an office.

(1) Names on certificates. All retail electric service shall be provided in the names under which the certificate was granted. If the applicant is a corporation, the commission shall issue the certificate in the corporate name of the applicant.

(A) No more than five assumed names may be authorized for use by any one REP at one time.

(B) Business names shall not be deceptive, misleading, vague, otherwise contrary to §25.272 of this title (relating to Code of Conduct for Electric Utilities and Their Affiliates), or duplicative of a name previously approved for use by an existing REP certificate holder.

(C) The commission shall review any names in which the applicant proposes to do business. If the commission determines that any requested name does not meet the requirements of subparagraph (B) of this paragraph, it shall notify the applicant that the requested name may not be used by the REP. A REP will be required to amend its application to provide at least one suitable name in order to be certificated.

(2) Office requirements. A REP shall continuously maintain an office located within Texas for the purpose of providing customer service, accepting service of process, and making available in that office books and records sufficient to establish the retail electric provider's compliance with the requirements of PURA Chapter 39, Subchapter H, and applicable commission rules. The office satisfying this requirement for a REP shall have a physical address that is not a post office box and shall be a location where the above three functions can occur. To evaluate compliance with requirements in this paragraph, the commission's authorized representative may visit the office

of a certificated REP at any time during normal business hours on the same basis available to an electric customer. An applicant shall submit the following information with an application:

(A) Evidence that it has made arrangements for an office located in Texas, including the physical address of the office; or

(B) An affidavit stating that the applicant will obtain an office located within Texas meeting the requirements of this paragraph, and will notify the commission of its physical address, after certification but before providing retail electric service to customers in Texas.

(f) Financial requirements. As a requisite for obtaining and maintaining certification, a REP must meet the financial resource standards established by this subsection. The standards established by paragraphs (1), (2), and (3) of this subsection are additive.

(1) Financial standards required for credit quality. A REP shall fulfill the following financial qualifications listed below concerning its underlying credit quality:

(A) Minimum credit standards for REP certification. In order to be certified by the commission, a REP or its parent corporation or controlling shareholder providing a guaranty to its REP under subparagraph (D) of this paragraph must demonstrate and, as a condition of continued certification, maintain:

(i) An investment grade credit rating as provided for under subparagraph (F) of this paragraph; or

(ii) Assets in excess of liabilities, i.e., equity, of at least $50,000,000 on its most recent balance sheet; or

(iii) Unused cash resources of at least $100,000, which will allow the REP to incur in Texas up to $250,000 in total monthly billings (excluding transition charges billings) from TDUs. In the event of surpassing the $250,000 per month level of total billings from TDUs in Texas, the REP shall maintain this same ratio of unused cash resources to TDU billings on an ongoing basis. Within 90 days of surpassing the $250,000 billing threshold, the REP shall file with the commission a sworn affidavit demonstrating compliance with this clause. The REP shall thereafter include demonstration of its compliance with this clause in its annual reports. The cash resources under this clause shall be used to first address all commission penalties and then credit obligations to the TDU, if any, in the event of the REP's default.

(B) Utility credit standards for REPs. With the exception of the credit standards provided for in paragraph (3) of this subsection, a transmission and distribution utility shall not impose any additional or separate credit conditions on a REP, unless the REP has defaulted on one or more payments to the utility for services provided by the utility. A transmission and distribution utility may impose credit conditions on a REP that has defaulted to the extent specified in its tariff and allowed by commission rules.

(C) Financial evidence. A REP shall be permitted to use any of the financial instruments listed below, as well as any other financial instruments approved in advance by the commission, in order to satisfy the cash requirements established by this rule.

(i) Cash or cash equivalent, including cashier's check or sight draft;

(ii) A certificate of deposit with a bank or other financial institution;

(iii) A letter of credit issued by a bank or other financial institution, irrevocable for a period of at least 15 months;

(iv) A line of credit or other loan issued by a bank or other financial institution, including a bond in a form approved by the commission, irrevocable for a period of at least 15 months;

(v) A loan issued by a subsidiary or affiliate of the applicant or a corporation holding controlling interest in the applicant, irrevocable for a period of at least 15 months;

(vi) A guaranty issued by a shareholder or principal of the applicant; a subsidiary or affiliate of the applicant or a corporation holding controlling interest in the applicant; irrevocable for a period of at least 15 months.

(D) Loans or guarantees. To the extent that it relies upon a loan or guaranty described in subparagraph (C)(v) or (vi) of this paragraph, the REP shall provide financial evidence sufficient to demonstrate that the lender or guarantor possesses the cash or cash equivalents needed to fund the loan or guaranty.

(E) Unencumbered resources. All cash and other instruments listed in subparagraph (C) of this paragraph as evidence of financial resources shall be unencumbered by pledges for collateral. These financial resources shall be subject to verification and review prior to certification of the REP and at any time after certification in which the REP relies on the cash or other financial instrument to meet the requirements under this subsection. The resources available to the REP must be authenticated by independent, third party documentation.

(F) Credit ratings. To meet the requirements of this paragraph, a REP may rely upon either its own investment grade credit rating, or a bond, guaranty, or corporate commitment of an affiliate or another company, if the entity providing such security is also rated investment grade. The determination of such investment grade quality will be based on the credit ratings of Standard & Poor's (S&P), Moody's Investor Services (Moody's), or any other nationally recognized rating agency, including Fitch for financial institutions and Best for insurance companies. Minimum investment credit ratings include "BBB-" for S&P or "Baa3" for Moody's, or their financial equivalent. If the investment grade credit rating of either S&P or Moody's is suspended or withdrawn, the REP must provide alternative financial evidence included under subparagraph (A)(ii) or (iii) of this paragraph within ten days of the credit downgrade.

(G) Financial requirements for certain REPs. The financial condition of a REP that together with any affiliates serves one million or more residential customers in Texas and does not meet the requirements of one of the alternatives specified in clauses (i) through (v) of this subparagraph is subject to review by the commission. In a review of the financial condition of a REP under this subparagraph, the commission may establish financial requirements for the REP that are different from the requirements that are otherwise applicable under this subsection, to ensure that the REP has the financial resources to provide continuous and reliable electric service to its customers.

(i) The REP has its own credit rating of "BBB" for S&P or "Baa2" for Moody's or their financial equivalent at any other nationally recognized rating agency, including Fitch for financial institutions and Best for insurance companies;

(ii) The REP's parent corporation or controlling shareholder providing a guaranty to the REP under this subsection has a minimum credit rating of "BBB" for S&P or "Baa2" for Moody's or their financial equivalent at any other nationally recognized rating agency, including Fitch for financial institutions and Best for insurance companies.

(iii) The REP or its parent corporation or controlling shareholder providing a guaranty to the REP under this subsection is secured by a bond, guaranty, or corporate commitment of an affiliate or

another entity that has a minimum credit rating of "BBB" for S&P or "Baa2" for Moody's or their financial equivalent at any other nationally recognized rating agency, including Fitch for financial institutions and Best for insurance companies.

(iv) The REP or its parent corporation or controlling shareholder providing a guaranty to the REP under this subsection demonstrates and maintains assets in excess of liabilities, *i.e.*, equity, in an amount equal to 300% of the total monthly amounts it is billed by TDUs in Texas (excluding transition charges billings, which are addressed by §25.108 of this title (relating to Financial Standards for Retail Electric Providers Regarding the Billing and Collection of Transition Charges) plus the amount necessary to meet the requirements of paragraph (2) of this subsection. A REP satisfying its minimum financial requirements through this alternative shall, in addition to any other reporting required under this section, file financial information with the commission on a quarterly basis demonstrating continued compliance with this subparagraph.

(v) The REP or its parent corporation or controlling shareholder providing a guaranty to the REP under this subsection demonstrates and maintains unused cash resources in an amount equal to 100% of the total monthly amount it is billed by TDUs in Texas (excluding amounts billed for transition charges, which are addressed by §25.108 of this title) plus the amount necessary to meet the requirements of paragraph (2) of this subsection. This requirement may also be met by a letter of credit issued by an entity that has a minimum credit rating of "BBB" for S&P or "Baa2" for Moody's or their financial equivalent at any other nationally recognized rating agency, including Fitch for financial institutions and Best for insurance companies. The unused cash resources demonstrated and maintained pursuant to this clause shall be unencumbered by pledges for collateral. A REP satisfying its minimum financial requirements through this alternative shall, in addition to any other reporting required under this section, file financial information on a quarterly basis demonstrating continued compliance with this subparagraph. In the event of the REP's default, the cash resources under this clause shall be used first to meet the requirements of paragraph (2) of this subsection to the extent that the REP's cash resources are insufficient to meet both the requirements of this clause and paragraph (2) of this subsection, then commission penalties, and then obligations to TDUs.

(vi) Information that may be filed to meet the requirements of clause (iv) or (v) of this subparagraph includes a quarterly financial statement filed with the U.S. Securities and Exchange Commission or, for a REP that does not routinely file such quarterly financial statements, other information that is affirmed by an officer of the REP, its parent corporation, or controlling shareholder and provides sufficient evidence demonstrating compliance with the requirements of clause (iv) or (v) of this subparagraph. The information filed to meet the requirements of clause (iv) or (v) of this subparagraph shall be promptly provided to any TDU that requests the information, subject to the terms of a mutually-agreeable confidentiality agreement, if the REP asserts that the information is confidential.

(vii) A REP shall provide additional information within a reasonable time frame as requested by the commission staff to verify the financial resources submitted by the REP under this subparagraph.

(2) Financial standards required for customer protection. A REP shall maintain records on an on-going basis for any deposits or advance payments received from customers. Financial obligations to customers shall be payable to them within 30 calendar days from the date the REP notifies the commission that it intends to withdraw its certification or is deemed by the commission not able to meet its current customer obligations. Customer obligations shall be settled before the REP withdraws its certification or ceases doing business in Texas. A REP must meet the following financial qualifications concerning its receipt of customer payments:

(A) Financial obligations to customers. The REP must maintain and provide evidence of financial resources equal to the sum of its obligations to customers for any deposits or other advance payments received from customers, subject to the following conditions.

(i) Financial resources required under this paragraph shall be maintained at levels sufficient to demonstrate that the REP can cover all deposits or other advance payments that are outstanding at any given time.

(ii) The REP shall file with the commission a sworn affidavit demonstrating compliance with this paragraph within 90 days of receiving the first deposit or other advance payment from customers for its services.

(iii) Financial resources required pursuant to this subsection shall not be reduced by the REP without the advance approval of the commission.

(B) Financial evidence. A REP shall be permitted to use any of the financial instruments and conditions set out in paragraph (1)(C) - (G) of this subsection to demonstrate that its resources are adequate for customer protection.

(C) External notice. Any party providing the financial resources necessary to protect customers under this provision of the rule, either directly or indirectly, shall be provided a copy of this rule by the REP.

(3) Financial standards required of REPs for the billing and collection of transition charges. If a REP serves customers in the service area of a transmission and distribution utility that is subject to a financing order pursuant to PURA §39.310, the REP shall comply with any additional standards specified in §25.108 of this title.

(4) Credit support by affiliates. To the extent it relies on an affiliated transmission or distribution utility for credit, investment, or financing arrangements pursuant to this subsection, the REP shall demonstrate that any such arrangement complies with §25.272(d)(7) of this title.

(5) Reporting requirements. A REP certified under this section is subject to the ongoing annual financial requirements of this subsection and any other applicable requirements of subsection (i) of this section.

(6) Cure of the failure of certain REPs to meet financial requirements. If a REP subject to paragraph (1)(G) of this subsection fails to meet the financial requirements approved by the commission or specified in that subsection, the REP shall within ten days provide evidence of compliance with one of the financial requirements set out in paragraph (1)(G)(i) - (v) of this subsection or shall be subject to commission review pursuant to this subsection.

(g) Technical and managerial resource requirements. As a requisite for providing retail electric service, a REP must have technical resources to provide continuous and reliable electric service to customers in its service area and technical and managerial ability to supply electric service at retail in accordance with its customer contracts. Technical and managerial resource requirements include:

(1) Capability to comply with all scheduling, operating, planning, reliability, customer registration and settlement policies, rules, guidelines, and procedures established by the ERCOT independent system operator (ISO), or other independent organization, if applicable, including any independent organization requirements

for 24-hour coordination with control centers for scheduling changes, reserve implementation, curtailment orders, interruption plan implementation, and telephone number, fax number, and address where its staff can be directly reached at all times.

(2) Capability to comply with the registration and certification requirements of the ERCOT ISO or other independent organization and its system rules, or contracts for the purchase of power from entities registered with or certified by the ERCOT ISO or independent organization and capable of complying with its system rules.

(3) Purchase of capacity and reserves, or other ancillary services, as may be required by the ERCOT ISO or other independent organization to provide adequate electricity to all the applicant's customers in its certificated area.

(4) Compliance with all renewable energy portfolio standards in accordance with §25.173 of this title (relating to Goal for Renewable Energy), whether by money or by deed.

(5) At least one principal or employee experienced in the retail electric industry or a related industry.

(6) Adequate staffing and employee training to meet all service level commitments.

(7) The capability and effective procedures to be the primary point of contact for retail electric customers for distribution system service in accordance with applicable commission rules, including procedures for relaying outage reports to the transmission and distribution utility on a 24-hour basis.

(8) A customer service plan that describes how the REP complies with the commission's customer protection and anti-discrimination rules.

(9) The following information submitted in an initial application:

(A) Prior experience of the applicant or one or more of the applicant's principals or employees in the retail electric industry or a related industry.

(B) Any complaint history and compliance record during the three calendar years prior to the filing of the application regarding the applicant, applicant's affiliates that provide utility related services such as telecommunications, electric, gas, water, or cable service, the applicant's predecessors in interest, and principals with public utility commissions, attorney general offices, or other applicable regulatory agencies in other states where the applicant is doing business or has conducted business in the past or with the Texas Secretary of State, Texas Comptroller's Office, or Office of the Texas Attorney General. Relevant information shall include, but is not limited to, the type of complaint, status of complaint, resolution of complaint and the number of customers in each state where complaints occurred. The Office of Customer Protection shall review any similar complaint information on file at the commission.

(C) A summary of any history of bankruptcy, dissolution, merger or acquisition of the applicant or any predecessors in interest in the three calendar years immediately preceding the application; and

(D) A statement indicating whether the applicant is currently under investigation, or has been penalized, by an attorney general or any state or federal regulatory agency, either in this state or in another state or jurisdiction for violation of any deceptive trade or consumer protection laws or regulations.

(E) Disclosure of whether the applicant, a predecessor, an officer, director or principal has been convicted or found liable for fraud, theft or larceny, deceit, or violations of any customer protection or deceptive trade laws in any state;

(F) An affidavit stating that the applicant will register with or be certified by the ERCOT ISO or other independent organization and will comply with the technical and managerial requirements of paragraphs (1) - (4) of this subsection; or that all entities with whom the applicant has a contractual relationship to purchase power are registered with or certified by the independent organization and will comply with all system rules and standards established by the independent organization; and

(G) Other evidence, at the discretion of the applicant, supporting the applicant's plans for meeting requirements listed in paragraphs (1) - (5) of this subsection.

(h) Customer Protection requirements. As a requisite for obtaining and maintaining certification, a REP shall comply with any customer protection requirements, disclosure requirements, marketing guidelines and anti-discrimination rules adopted by the commission. In the absence of other commission rules, certificated REPS shall be held to the general standards listed below. An applicant for certification as a REP shall provide a sworn affidavit, as specified in the application form approved by the commission, that it will comply with this section and any other applicable customer protection rules, disclosure requirements, marketing guidelines, and anti-discrimination rules approved by the commission.

(1) A REP may not refuse to provide retail electric service or otherwise discriminate in the provision of electric service to any customer because of race, creed, color, national origin, ancestry, sex, marital status, lawful source of income, disability, or familial status; or refuse to provide retail electric service to a customer because the customer is located in an economically distressed geographic area or qualifies for low-income affordability or energy efficiency services.

(2) A REP shall inform its customers whom to contact and what to do in the event of power outage or other electricity-related emergency.

(3) A REP shall inform its customers of the customer's rights and avenues available to pursue a complaint against the REP as afforded by PURA §39.101.

(4) A REP shall not switch, or cause to be switched, the retail electric provider for a customer without first obtaining proper authorization from the customer.

(5) A REP shall not bill, or cause to be billed, an unauthorized charge to a customer's retail electric service bill.

(6) A REP shall respond in good faith when notified by a customer of a complaint.

(7) A REP shall maintain a customer service staff adequate to handle customer inquiries and complaints.

(8) A REP may not release proprietary customer information to any person unless the customer authorizes the release in a manner approved by the commission.

(i) Requirements for reporting and for changing the terms of a REP certificate. The ongoing maintenance of a REP certificate is dependent upon keeping the certification information up to date, pursuant to the following requirements:

(1) The certificate holder shall notify the commission within 30 days of any change in its office address, business address, telephone number(s), or other contact information.

(2) A certificate holder that has met certain certification requirements of this rule by affidavit shall supply information to the commission to show compliance with the requirement as follows:

(A) A REP who met the Texas office requirement pursuant to subsection (e)(2)(B) of this section shall supply the commission with the physical office address on or before the date of commencing retail electric service in Texas.

(B) A REP that demonstrates that it can meet the technical requirements of subsection (g)(9)(G) of this section by means of an affidavit shall supply the commission with evidence that it has the capability to comply with subsection (g)(1) - (4) on or before the 21st day prior to commencing retail electric service in Texas.

(3) If any of the following events occur, the holder of a REP certificate must be prepared, if necessary, for re-certification by the commission and shall notify the commission:

(A) within 30 days of a material change in any of the technical conditions presented pursuant to subsection (g) of this section as the basis for the approval of the applicant's initial certification; or,

(B) for REPs not subject to subsection (f)(1)(G) of this section, within ten days of a material change in any of the financial requirements presented pursuant to subsection (f) of this section as the basis for approval of the applicant's initial certification, with a material financial change defined as the loss of investment grade or a 5.0% decline in either the $50 million equity standard or the $100,000 cash standard; or

(C) for REPs subject to subsection (f)(1)(G) of this section, within five days of a material change in any of the financial requirements presented pursuant to subsection (f) of this section as the basis for approval of the applicant's certification, with a material financial change defined as the loss of the minimum required credit rating, failure to meet either the equity standard prescribed by subsection (f)(1)(G)(iv) of this section or the unused cash resources standard prescribed by subsection (f)(1)(G)(v) of this section, or a decline in either the equity standard or the unused cash resources standard such that the REP is within 5.0% of failing to comply with the minimum equity or cash standard.

(4) All REP certificate holders shall file updated information set forth in this subsection on an annual basis on a report form approved by the commission. The annual report is due on June 1 each year for the preceding calendar year. A company's first annual report is due in the year following the calendar year in which it is awarded a certificate. The following information, at a minimum, shall be reported annually:

(A) Any changes in addresses, telephone numbers, authorized contacts, and other information necessary for contacting the certificate holder.

(B) If certificated for a service area defined by geography, identification of areas where the REP is providing retail electric service to customers in Texas compiled by zip code.

(C) For 36 months after retail competition begins, the result of the calculation and proof of threshold residential service requirements and the amount paid into the system benefit fund, if applicable, pursuant to subsection (e)(3) of this section.

(D) A list of aggregators with whom the REPs have conducted business in the reporting period, including commission registration verification for each.

(E) A sworn affidavit that the certificate holder is not in material violation of any of the requirements of its certificate.

(5) The holder of a REP certificate shall file with the commission notice of changes to the organizational structure or to the material facts represented in its application, including, but not limited to any change in name, service area, facilities ownership or affiliation upon which the commission relied in approving the REP's application. The commission may require the REP to file an amendment to its certificate if it determines that the changes warrant a reevaluation of the REP's basis for certification.

(6) The holder of a REP certificate for a service area defined by specific customers may amend its certificate to add additional specified customers by submitting to the commission the affidavit required by subsection (d)(2) of this section from the additional customers on or before the commencement of electric service to those customers.

(7) A REP certificate shall not be transferred without prior commission approval. Approval for transfer shall be obtained by petition to the commission. The transferee must complete and file with the commission an application form for certification that demonstrates the transferee's financial and technical fitness to render service under the transferred certificate.

(8) No REP certificate holder shall cease operations as a REP without prior notice to the commission, to each of the REP's customers to whom the REP is providing service on the proposed date of cessation of business operations, and other affected persons, including the independent operator, transmission and distribution utilities, electric distribution cooperatives, municipally owned utilities, generation suppliers, and providers of last resort. The REP shall file with the commission proof of refund of any monies owed to customers. Upon the effective cessation date, a REP's certificate will be deemed suspended. If, within 24-months of cessation, a REP demonstrates compliance with certification requirements, the certificate will be reinstated.

(9) If a REP files a petition in bankruptcy, is the subject of an involuntary bankruptcy proceeding, or in any other manner becomes insolvent, it shall notify the commission within ten days of this event and shall provide the commission a brief summary of the nature of the proceedings. The commission shall have the right to proceed against any financial resources that the REP relied on in obtaining its certificate, to satisfy unpaid administrative penalties or payments owed to customers.

(j) Suspension and revocation. Pursuant to PURA §39.356, certificates granted pursuant to this section are subject to suspension and revocation for significant violations of PURA, commission rules, or reliability standards adopted by an independent organization. The commission may also amend the certificate or impose an administrative penalty for a significant violation. The commission or any affected person may bring a complaint seeking to suspend or revoke a REP's certificate. Significant violations include, but are not limited to, the following:

(1) Providing false or misleading information to the commission;

(2) Engaging in fraudulent, unfair, misleading, deceptive, or anti-competitive business practices or unlawful discrimination;

(3) Switching, or causing to be switched, the retail electric provider for a customer without first obtaining the customer's permission;

(4) Billing an unauthorized charge, or causing an unauthorized charge to be billed to a customer's retail electric service bill;

(5) Failure to maintain continuous and reliable electric service to its customers pursuant to this section;

(6) Failure to maintain financial resources in accordance with subsection (f) of this section;

(7) Bankruptcy, insolvency, or the inability to meet financial obligations on a reasonable and timely basis;

(8) Failure to timely remit payment for invoiced charges to a transmission and distribution utility pursuant to the terms of the statewide standardized tariff adopted by the commission;

(9) Failure to observe any scheduling, operating, planning, reliability, and settlement policies, rules, guidelines, and procedures established by the independent organization;

(10) A pattern of not responding to commission inquiries or customer complaints in a timely fashion;

(11) Suspension or revocation of a registration, certification, or license by any state or federal authority;

(12) Conviction of a felony by the certificate holder or principal employed by the certificate holder, of any crime involving fraud, theft or deceit related to the certificate holder's service;

(13) Not providing retail electric service to customers within 24 months of the certificate being granted by the commission;

(14) Failure to serve as a provider of last resort if required to do so by the commission pursuant to PURA §39.106(f); and

(15) Failure, or a pattern of failures to meet the conditions of this section or other commission rules or orders.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on October 11, 2007.

TRD-200704859
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Effective date: October 31, 2007
Proposal publication date: April 13, 2007
For further information, please call: (512) 936-7223

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TITLE 22. EXAMINING BOARDS

PART 8. TEXAS APPRAISER LICENSING AND CERTIFICATION BOARD

CHAPTER 153. RULES RELATING TO PROVISIONS OF THE TEXAS APPRAISER LICENSING AND CERTIFICATION ACT

22 TAC §153.5, §153.9

The Texas Appraiser Licensing and Certification Board adopts amendments to §153.5, concerning Fees and §153.9, concerning Applications without changes to the proposed text as published in the August 24, 2007, issue of the *Texas Register* (32 TexReg 5291) and will not be republished.

The amendments to §153.5, add language establishing an education evaluation fee of $30 and increasing the application and renewal fee by $30 each year.

The amendments to §153.9, add language requiring applicants to submit their education for evaluation prior to submitting their application for licensure or certification. The amendment also revises the Board's application forms to incorporate the adopted fee increase referenced in §153.5.

No written comments were received regarding adoption of the amendments.

The amendments are adopted under the Texas Appraiser Licensing and Certification Act, Subchapter D, Board Powers and Duties (Occupations Code, Chapter 1103), which provides the Board with authority to adopt rules relating to certification and licensure under §1103.151.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on October 10, 2007.

TRD-200704852
Troy Beaulieu
Attorney
Texas Appraiser Licensing and Certification Board
Effective date: October 30, 2007
Proposal publication date: August 24, 2007
For further information, please call: (512) 465-3959

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PART 17. TEXAS STATE BOARD OF PLUMBING EXAMINERS

CHAPTER 361. ADMINISTRATION

SUBCHAPTER A. GENERAL PROVISIONS

22 TAC §361.1

The Texas State Board of Plumbing Examiners adopts amendments to §361.1, without changes to the proposed text as published in the July 27, 2007, issue of the *Texas Register* (32 TexReg 4619). No comments were received regarding the proposed rule amendments.

The amendments to §361.1 are adopted in response to the passage of House Bill 1850, 80th Regular Legislative Session. H.B. 1850 amended §1301.255(e) to allow a political subdivision to contract with any plumbing inspector or qualified plumbing inspection business that is paid directly by the political subdivision, effective September 1, 2007. The amendments to §361.1(33) will reflect the changes made by H.B. 1850. The amendments to §361.1(33) will also remove a reference to Board Rule §365.1(4)(B), which was previously deleted.

The amendments to §361.1 are adopted under and affect Title 8, Chapter 1301, Occupations Code, as amended by the 80th Legislature ("Plumbing License Law" or "Law"), §§1301.251, 1301.002(8), 1301.255(e), 1301.351(b), and 1301.551(d); the rule it amends; and H.B. 1850 (80th Regular Legislative Session). Section 1301.251 requires the Board to adopt and enforce rules necessary to administer the Plumbing License

Law. Section 1301.002(8) defines "Plumbing Inspector" as a person who is employed by or contracted with a political subdivision for the purpose of performing plumbing inspections. Section 1301.255(e) as amended by H.B. 1850 (80th Regular Legislative Session), allows a political subdivision to contract with any plumbing inspector or qualified plumbing inspection business that is paid directly by the political subdivision. Section 1301.351(b) prohibits a person from serving as a plumbing inspector without being licensed as a plumbing inspector. Section 1301.551(d) requires plumbing inspections performed in a municipality which has adopted a plumbing code be performed by a plumbing inspector.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on October 10, 2007.

TRD-200704847
Robert L. Maxwell
Executive Director
Texas State Board of Plumbing Examiners
Effective date: October 30, 2007
Proposal publication date: July 27, 2007
For further information, please call: (512) 936-5224

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22 TAC §361.7

The Texas State Board of Plumbing Examiners adopts new §361.7, without changes to the proposed text as published in the July 27, 2007, issue of the *Texas Register* (32 TexReg 4620).

The new §361.7 defines eligibility and payment for training and education of Board employees and administrators in accordance with the Employees Training Act, Government Code §§656.041 - 656.049. The public will benefit from having Board employees and administrators receiving job related training, based upon available funds and need.

No comments were received regarding the proposed new rule.

The new §361.7 is adopted under and affects Government Code, Chapter 656, Subchapter C; Title 8, Chapter 1301, Occupations Code, ("Plumbing License Law" or "Law"), §1301.251, and the rule it amends. Government Code, Chapter 656, Subchapter C requires a state agency to adopt rules regarding employee and administrator training and education in order to expend funds for such purposes. Section 1301.251 of the Plumbing License Law requires the Board to adopt and enforce rules necessary to administer the Plumbing License Law.

No other statute, article or code is affected by this new rule.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on October 10, 2007.

TRD-200704851
Robert L. Maxwell
Executive Director
Texas State Board of Plumbing Examiners
Effective date: October 30, 2007
Proposal publication date: July 27, 2007
For further information, please call: (512) 936-5224

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CHAPTER 365. LICENSING AND REGISTRATION

22 TAC §365.5

The Texas State Board of Plumbing Examiners adopts amendments to §365.5, without changes to the proposed text as published in the July 27, 2007, issue of the *Texas Register* (32 TexReg 4620). No comments were received regarding the proposed rule amendment.

The amendments to §365.5 are adopted to eliminate the requirement that a Plumbing Inspector submit written proof of employment or contract with a political subdivision along with the required renewal fee. This requirement is unnecessary, since Board Rule §367.2 requires plumbing inspectors to have initially submitted such proof prior to performing plumbing inspections and §365.8 requires plumbing inspectors to notify the Board of any change in employment or contract status.

Additional amendments to §365.5 are adopted in compliance with Occupations Code, Chapter 55, §§55.001 - 55.003, which allow certain military personnel to renew an expired license without penalty if the person was ordered to active duty.

The amendments to §365.5 are adopted under and affect Title 8, Chapter 1301, Occupations Code, ("Plumbing License Law" or "Law"), §§1301.251, 1301.002(8), and 1301.403 and the rule it amends. Section 1301.251 requires the Board to adopt and enforce rules necessary to administer the Plumbing License Law. Section 1301.002(8) defines "plumbing inspector" as a person who contracts with or is employed by a political subdivision. Section 1301.403 provides for license renewal requirements. The amendments to §365.5 are also adopted under and affect Title 2, Chapter 55, Occupations Code, which allow certain military personnel to renew an expired license without penalty if the person was ordered to active duty.

No other statute, article, or code is affected by these adopted amendments.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on October 10, 2007.

TRD-200704848
Robert L. Maxwell
Executive Director
Texas State Board of Plumbing Examiners
Effective date: October 30, 2007
Proposal publication date: July 27, 2007
For further information, please call: (512) 936-5224

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CHAPTER 367. ENFORCEMENT

22 TAC §367.2

The Texas State Board of Plumbing Examiners adopts amendments to §367.2, without changes to the proposed text as published in the July 27, 2007, issue of the *Texas Register* (32 TexReg 4621). No comments were received regarding the proposed rule amendment.

The amendments to §367.2 are adopted in response to the passage of House Bill 1850, 80th Regular Legislative Session. H.B. 1850 amended §1301.255(e) to allow a political subdivision to contract with any plumbing inspector or qualified plumbing inspection business that is paid directly by the political subdivision, effective September 1, 2007. The amendments to §367.2 will reflect the changes made by H.B. 1850.

The amendments to §367.2 are adopted under and affect Title 8, Chapter 1301, Occupations Code, as amended by the 80th Legislature ("Plumbing License Law" or "Law"), §§1301.251, 1301.002(8), 1301.255(e), 1301.351(b). and 1301.551(d); the rule it amends; and H.B. 1850 (80th Regular Legislative Session). Section 1301.251 requires the Board to adopt and enforce rules necessary to administer the Plumbing License Law. Section 1301.002(8) defines "Plumbing Inspector" as a person who is employed by or contracted with a political subdivision for the purpose of performing plumbing inspections. Section 1301.255(e), as amended by H.B. 1850 (80th Regular Legislative Session), allows a political subdivision to contract with any plumbing inspector or qualified plumbing inspection business that is paid directly by the political subdivision. Section 1301.351(b) prohibits a person from serving as a plumbing inspector without being licensed as a plumbing inspector. Section 1301.551(d) requires plumbing inspections performed in a municipality which has adopted a plumbing code be performed by a plumbing inspector.

No other statute, article, or code is affected by these adopted amendments.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on October 10, 2007.

TRD-200704849
Robert L. Maxwell
Executive Director
Texas State Board of Plumbing Examiners
Effective date: October 30, 2007
Proposal publication date: July 27, 2007
For further information, please call: (512) 936-5224

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22 TAC §367.3

The Texas State Board of Plumbing Examiners adopts amendments to §367.3, without changes to the proposed text as published in the July 27, 2007, issue of the *Texas Register* (32 TexReg 4622).

Board rule §367.3 sets forth the requirements for plumbing companies or persons who offer to perform plumbing work to the general public. The requirements include securing the services of a Responsible Master Plumber and the order and level of supervision required for licensed plumbers and registrants who perform plumbing under the license of a Responsible Master Plumber. The current §367.3 also requires a licensed plumber working under the general supervision of a Responsible Master Plumber to be a bona fide employee of, or the owner of the firm, company, or corporation using the license of the Responsible Master Plumber.

The amendments to §367.3 will allow a licensed plumber who works under the general supervision of a Responsible Master Plumber to have a contractual relationship with the Responsible Master Plumber or the firm, company or corporation using the license. The amendments will allow the contractual relationship to be in lieu of the requirement for the licensed plumber to be a bona fide employee of, or the owner of the firm, company, or corporation using the license of the Responsible Master Plumber. The amendments will correct the unintended consequence of the current language which does not allow for such contractual relationships.

All other amendments to §367.3 clarify already existing requirements.

The amendments will not change any current requirements of the Plumbing License Law or Board Rules which prohibit a Journeyman Plumber, Tradesman Plumber-Limited Licensee, Drain Cleaner, Drain Cleaner Restricted Registrant or Plumber's Apprentice from contracting with the general public to perform plumbing work.

The amendments will not change any current requirements of the Plumbing License Law or Board Rules which require general or direct supervision of licensees and registrants, as specified in Board Rules §361.1 and §367.3.

The amendments will not change any current requirements of the Plumbing License Law or Board Rules which provide for the responsibilities of Responsible Master Plumbers, as specified in Board Rules §361.1 and §367.3

No comments were received opposing the adoption of the proposed rule amendments.

The following associations or individuals provided oral or written testimony in support of adoption of the proposed rule amendments or otherwise documented their support for the adoption of the proposed rule amendments: Robert Seibert, Davis and Davis, P.C.; Thomas Mozjesik, L&S Plumbing; Gaylon Hull, L&S Plumbing; Mark Toems, L&S Plumbing; Glen Fuller, Responsible Plumbers Association (RPA); Cary Ostera, RPA; Shawn McCall, RPA; W.W. Holloway, RPA; Carmen Sottile, RPA; Jeff Bowden, RPA; Shelly Eversole, RPA; Robert Zvanut, RPA; Nancy Jones, Associated Plumbing-Heating-Cooling Contractors of Texas; Bobby Doran, CPE provider.

The amendments to §367.3 are adopted under and affect Title 8, Chapter 1301, Occupations Code, §§1301.251, 1301.002, 1301.351 and the rule it amends. Section 1301.251 requires the Board to adopt and enforce rules necessary to administer the Plumbing License Law. Section 1301.002 defines each type of license and registration issued by the Board, the general scope of work permitted by each type and the level of supervision required for each type of license or registration. Section 1301.351 prohibits a person from engaging in the business of plumbing without holding a license issued by the Board or being under the supervision of a licensed person.

No other statute, article or code is affected by these amendments.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on October 10, 2007.

TRD-200704850
Robert L. Maxwell
Executive Director
Texas State Board of Plumbing Examiners
Effective date: October 30, 2007
Proposal publication date: July 27, 2007
For further information, please call: (512) 936-5224

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PART 23. TEXAS REAL ESTATE COMMISSION

CHAPTER 535. GENERAL PROVISIONS
SUBCHAPTER J. FEES

22 TAC §535.101

The Texas Real Estate Commission (TREC) adopts amendments to §535.101, regarding Fees without changes to the proposed text as published in the August 31, 2007, issue of the *Texas Register* (32 TexReg 5329) and will not be republished.

This section establishes the fees necessary for the administration of TREC's functions. The amendments would remove Texas Online fees from the TREC fee schedule, increase the salesperson application fee from $50 to $75, add a provision for late renewal fees, and increase the education evaluation fee from $20 to $30.

The justification for the amendments is to raise the necessary revenue to offset the additional costs incurred to implement new programs required by laws passed by the 80th Legislature. The 80th Legislature in the 2008-2009 General Appropriations Act and riders thereto concerning House Bill 716, House Bill 1530, and Senate Bill 914, approved budget appropriations for the commission contingent on those appropriations being paid through fee collections.

Since the Texas Online fees are separate fees that are required to be paid under other laws and rules administered by the Texas Department of Information Resources, the fees need not be referenced as TREC fees.

No comments were received regarding adoption of the amendments.

The amendments are adopted under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapter 1101; and to establish standards of conduct and ethics for its licensees to fulfill the purposes of Chapter 1101 and ensure compliance with Chapter 1101.

The statute affected by the amendments is Texas Occupations Code, Chapter 1101. No other statute, code or article is affected by the amendments.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on October 15, 2007.

TRD-200704890
Loretta R. DeHay
General Counsel and Assistant Administrator
Texas Real Estate Commission
Effective date: November 4, 2007
Proposal publication date: August 31, 2007
For further information, please call: (512) 465-3900

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PART 29. TEXAS BOARD OF PROFESSIONAL LAND SURVEYING

CHAPTER 661. GENERAL RULES OF PROCEDURES AND PRACTICES
SUBCHAPTER D. APPLICATIONS, EXAMINATIONS, AND LICENSING

22 TAC §661.41

The Texas Board of Professional Land Surveying (Board) adopts an amendment to §661.41, concerning the surveyor-in-training certification, without changes to the proposed text as published in the August 31, 2007, issue of the *Texas Register* (32 TexReg 5630) and will not be republished. It will implement recently passed legislation as a result of S.B. 1340.

The adopted amendment will enact the requirement of The Professional Land Surveying Practices Act, §1071.253, Surveyor-in-training Certificate.

No comments were received regarding adoption of this amendment.

The amendment is adopted pursuant to §1071.151, Title 6, Occupations Code, Subtitle C, which authorizes the Board to adopt and enforce reasonable and necessary rules to perform its duties and to comply with Sunset Commission requirements.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on October 15, 2007.

TRD-200704882
Sandy Smith
Executive Director
Texas Board of Professional Land Surveying
Effective date: November 4, 2007
Proposal publication date: August 31, 2007
For further information, please call: (512) 239-5263

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22 TAC §661.42

The Texas Board of Professional Land Surveying (Board) adopts an amendment to §661.42, concerning Fees. The amendment is adopted without changes to the proposed text as published in the August 31, 2007, issue of the *Texas Register* (32 TexReg 5630) and will not be republished.

The adopted amendment removes language specifying the cost of the application fee.

No comments were received regarding adoption of the amendment.

The amendment is adopted pursuant to §1071.151, Title 6, Occupations Code, Subtitle C, which authorizes the Board to adopt and enforce reasonable and necessary rules to perform its duties and to comply with Sunset Commission requirements.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on October 15, 2007.

TRD-200704883
Sandy Smith
Executive Director
Texas Board of Professional Land Surveying
Effective date: November 4, 2007
Proposal publication date: August 31, 2007
For further information, please call: (512) 239-5263

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22 TAC §661.51

The Texas Board of Professional Land Surveying (Board) adopts a new rule §661.51, concerning compliance with the surveyor-in-training certification. The new rule is adopted without changes to the proposed text as published in the August 31, 2007, issue of the *Texas Register* (32 TexReg 5631) and will not be republished. The new rule is to implement recently passed legislation as a result of S.B. 1340.

The adopted new rule will enact the requirement of The Professional Land Surveying Practices Act, §1071.253, Surveyor-in-training Certificate and §1071.305, Continuing Professional Education.

No comments were received regarding adoption of the new rule.

The new rule is adopted pursuant to §1071.151, Title 6, Occupations Code, Subtitle C, which authorizes the Board to adopt and enforce reasonable and necessary rules to perform its duties and to comply with Sunset Commission requirements.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on October 15, 2007.

TRD-200704884
Sandy Smith
Executive Director
Texas Board of Professional Land Surveying
Effective date: November 4, 2007
Proposal publication date: August 31, 2007
For further information, please call: (512) 239-5263

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22 TAC §661.55

The Texas Board of Professional Land Surveying (Board) adopts an amendment to §661.55, concerning the registration of surveying firms. The amendment is adopted without changes to the proposed text as published in the June 22, 2007, issue of the *Texas Register* (32 TexReg 3832) and will not be republished. It will implement recently passed legislation as a result of H.B. 2820.

The adopted amendment to the rule will clarify the new requirements for registering firms.

No comments were received regarding adoption of the amendment.

The amendment is adopted pursuant to §1071.151, Title 6, Occupations Code, Subtitle C, which authorizes the Board to adopt and enforce reasonable and necessary rules to perform its duties and to comply with Sunset Commission requirements.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on October 15, 2007.

TRD-200704886
Sandy Smith
Executive Director
Texas Board of Professional Land Surveying
Effective date: November 4, 2007
Proposal publication date: June 22, 2007
For further information, please call: (512) 239-5263

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22 TAC §661.56

The Texas Board of Professional Land Surveying (Board) adopts a new rule §661.56, concerning the surveying firms renewal and expiration of certificate of registration. It is being adopted without changes to the proposed text as published in the June 22, 2007, issue of the *Texas Register* (32 TexReg 3833) and will not be republished. The new rule is to implement recently passed legislation as a result of H.B. 2820.

The adopted new rule will enact the requirement of The Professional Land Surveying Practices Act, §1071.352, Surveying by Business Entity.

No comments were received regarding adoption of the new rule.

The new rule is adopted pursuant to §1071.151, Title 6, Occupations Code, Subtitle C, which authorizes the Board to adopt and enforce reasonable and necessary rules to perform its duties and to comply with Sunset Commission requirements.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on October 15, 2007.

TRD-200704887
Sandy Smith
Executive Director
Texas Board of Professional Land Surveying
Effective date: November 4, 2007
Proposal publication date: June 22, 2007
For further information, please call: (512) 239-5263

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22 TAC §661.57

The Texas Board of Professional Land Surveying (Board) adopts a new rule §661.57, concerning compliance with the registration of firms, without changes to the proposed text as published in the August 24, 2007, issue of the *Texas Register* (32 TexReg 5292) and will not be republished. The new rule is to implement recently passed legislation as a result of H.B. 2820.

The adopted new rule will enact the requirement of The Professional Land Surveying Practices Act, §1071.352, Surveying by Business Entity.

No comments were received regarding adoption of the new rule.

The new rule is adopted pursuant to §1071.151, Title 6, Occupations Code, Subtitle C, which authorizes the Board to adopt and enforce reasonable and necessary rules to perform its duties and to comply with Sunset Commission requirements.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on October 15, 2007.

TRD-200704885
Sandy Smith
Executive Director
Texas Board of Professional Land Surveying
Effective date: November 4, 2007
Proposal publication date: August 24, 2007
For further information, please call: (512) 239-5263

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SUBCHAPTER E. CONTESTED CASES

22 TAC §661.60

The Texas Board of Professional Land Surveying (Board) adopts an amendment to §661.60, concerning the Responsibility to the Board, without changes to the proposed text as published in the June 22, 2007, issue of the *Texas Register* (32 TexReg 3834) and will not be republished. It will implement recently passed legislation as a result of H.B. 2820.

The adopted amendment will further clarify the responsibility a firm has toward the board in registering their firm.

No comments were received regarding adoption of the amendment.

The amendment is adopted pursuant to §1071.151, Title 6, Occupations Code, Subtitle C, which authorizes the Board to adopt and enforce reasonable and necessary rules to perform its duties and to comply with Sunset Commission requirements.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on October 15, 2007.

TRD-200704888
Sandy Smith
Executive Director
Texas Board of Professional Land Surveying
Effective date: November 4, 2007
Proposal publication date: June 22, 2007
For further information, please call: (512) 239-5263

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SUBCHAPTER F. FIRMS FURNISHING SURVEYING CREWS

22 TAC §661.121

The Texas Board of Professional Land Surveying (Board) adopts the repeal of §661.121, concerning firms furnishing survey crews as published in the June 22, 2007, issue of the *Texas Register* (32 TexReg 3835). This rule is being added to §661.55 which implements legislation of H.B. 2820 concerning surveying by business entity.

The adopted repeal of this rule is to move the language to a rule that will clarify the registration of firms and to implement legislation of H.B. 2820.

No comments were received regarding the adopted repeal of this rule.

The repeal of the amendment is adopted pursuant to §1071.151, Title 6, Occupations Code, Subtitle C, which authorizes the Board to adopt and enforce reasonable and necessary rules to perform its duties and to comply with Sunset Commission requirements.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on October 15, 2007.

TRD-200704889
Sandy Smith
Executive Director
Texas Board of Professional Land Surveying
Effective date: November 4, 2007
Proposal publication date: June 22, 2007
For further information, please call: (512) 239-5263

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TITLE 25. HEALTH SERVICES

PART 1. DEPARTMENT OF STATE HEALTH SERVICES

CHAPTER 417. TDMHMR AND FACILITY RESPONSIBILITIES

SUBCHAPTER D. PERMANENT IMPROVEMENTS DONATED BY INDIVIDUALS OR COMMUNITY GROUPS

25 TAC §§417.151 - 417.160

The Executive Commissioner of the Health and Human Services Commission (commission), on behalf of the Department of State Health Services (department) adopts the repeal of §§417.151 - 417.160, concerning the polices and procedures for donating and completing permanent improvements without changes to the proposal as published in the June 8, 2007, issue of the *Texas Register* (32 TexReg 3166) and, therefore, the sections will not be republished.

BACKGROUND AND PURPOSE

The rules describe the review and approval of proposed permanent improvements, acknowledging and accepting permanent improvements donations, and recording and maintaining official records of all improvement proposals and improvement acknowledgements of acceptance. A permanent improvement is defined as a state hospital improvement that requires construction or alteration of the physical plant infrastructure, or an improvement consisting of landscaping.

These rules will be replaced by a new internal department Permanent Improvement Donation policy, which provides an up-to-date, reorganized, and clarified process.

Government Code, §2001.039, requires that each state agency review and consider for readoption each rule adopted by that agency pursuant to the Government Code, Chapter 2001 (Administrative Procedure Act). Sections 417.151 - 417.160 have been reviewed and the department has determined that reasons for adopting the sections do not continue to exist because no rules on this subject are required.

SECTION-BY-SECTION SUMMARY

The repeal of §§417.151 - 417.160 is necessary because the internal policy will now provide a process for review, approval, acknowledgement, and recording of permanent improvement donations.

COMMENTS

The department, on behalf of the commission, did not receive any comments regarding the proposed rule repeal during the comment period.

LEGAL CERTIFICATION

The Department of State Health Services General Counsel, Lisa Hernandez, certifies that the rules as adopted, have been reviewed by legal counsel and found to be a valid exercise of the agencies' legal authority.

STATUTORY AUTHORITY

The repeals are adopted under Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001. The review of the rules implements Government Code, §2001.039.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on October 12, 2007.

TRD-200704860
Lisa Hernandez
General Counsel
Department of State Health Services
Effective date: November 1, 2007
Proposal publication date: June 8, 2007
For further information, please call: (512) 458-7111 x6972

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TITLE 34. PUBLIC FINANCE

PART 3. TEACHER RETIREMENT SYSTEM OF TEXAS

CHAPTER 25. MEMBERSHIP CREDIT

SUBCHAPTER P. CALCULATION OF FEES AND COSTS

34 TAC §25.302

The Teacher Retirement System of Texas (TRS or system) adopts amendments to §25.302, relating to the calculation of actuarial cost. The amended section is adopted without changes to the proposed text as published in the August 10, 2007, issue of the *Texas Register* (32 TexReg 4941).

Senate Bill 1691, 79th Legislature, Regular Session (2005) established new service retirement eligibility provisions for individuals whose membership begins on or after September 1, 2007, by amending §824.202 of the Government Code. Those members will be eligible for normal retirement age upon reaching age 60 and reaching rule of 80, instead of upon reaching rule of 80 at any age. For a member who meets the rule of 80 but is not yet age 60 at the time of retirement, the standard annuity amount will be reduced by 5% for each year below age 60. (Individuals whose membership begins on or after September 1, 2007, will continue to be eligible for normal retirement age upon reaching age 65 with at least five years of service credit, as other members are.) The changes to service retirement eligibility affect the calculation of the actuarial cost to purchase certain types of service credit by individuals whose membership begins on or after September 1, 2007.

When a member purchases work experience service credit, membership waiting period service credit, or out-of-state service credit, TRS uses actuarial cost factor tables prepared by the TRS actuary and adopted as part of §25.302. Before the amendment of §25.302, those cost factor tables reflected service-retirement eligibility requirements for members whose membership began before September 1, 2007. For members subject to the new statutory eligibility requirements for service retirement, the amended rule establishes updated cost factors

to reflect the "age 60" requirement for unreduced, normal age retirement even when a member meets the rule of 80 and its consequent effect on the calculation of actuarial cost for purchasing service credit. In most circumstances, the actuarial cost of the service credit is lower for the new members than for members eligible under the existing unreduced retirement eligibility provisions.

The adopted amendments also reflect that, in some instances, a member who is grandfathered to use a three-year average may in fact terminate membership and then begin membership again on or after September 1, 2007. In these circumstances, the member also will be subject to the new actuarial cost tables but will pay the calculated cost using the three-year salary average. Generally, the cost is higher for a member using a three-year salary average compared to a five-year salary average because the benefit is slightly higher for the grandfathered member. While TRS does not expect to see such circumstances often, the amendments will allow TRS to calculate the appropriate actuarial cost taking into account both the applicable eligibility requirements and the "grandfathered" status of an individual member.

In the set of factor tables that is part of subsection (b)(2) of §25.302, Table 1 is used to calculate the actuarial cost to purchase one year of additional service credit. This table currently contains factors starting with a column for a member who has at least five years of service credit at the time of purchase of additional service credit. However, for membership waiting period service credit, a member may purchase the credit with less than five years of TRS credit before purchase. In amended subsection (b)(2) of §25.302, a new Table 1 replaces the former one and contains the columns needed to calculate costs if a member with less than five years of service credit were apply to purchase the service credit. Minor amendments remove references to font types on the tables because they complicate the re-production of the tables in various publications.

No comments were received regarding the proposed amended rule.

Statutory Authority: The amendments are adopted under the following authorities: §825.102, Government Code, which authorizes the Board to adopt rules for eligibility of membership, the administration of the funds of the retirement system, and for the transaction of the business of the Board; §823.406, Government Code, authorizing the Board to adopt rules for the administration of this statute concerning the purchase of membership waiting period service credit; and §825.105, which requires the Board to adopt rates and tables the Board considers necessary for the retirement system.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on October 12, 2007.

TRD-200704865
Ronnie G. Jung
Executive Director
Teacher Retirement System of Texas
Effective date: November 1, 2007
Proposal publication date: August 10, 2007
For further information, please call: (512) 542-6438

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CHAPTER 53. CERTIFICATION BY COMPANIES OFFERING QUALIFIED INVESTMENT PRODUCTS

34 TAC §§53.1, 53.4 - 53.8, 53.12 - 53.16, 53.18, 53.19

The Board of Trustees (Board) of the Teacher Retirement System of Texas (TRS or system) adopts amendments to §§53.1, 53.4 - 53.8, 53.12 - 53.14 and new §§53.15, 53.16, 53.18, and 53.19 for the certification of companies offering qualified investment products through what are commonly referred to as "403(b) plans," which educational institutions make available to their employees, and the registration of those products. The amendments and new sections are adopted without changes to the proposed text as published in the August 10, 2007, issue of the *Texas Register* (32 TexReg 4943).

The 80th Legislature, Regular Session (2007), amended Article 6228a-5, V.T.C.S., to require that 403(b)-plan companies register investment products offered on or after January 1, 2008. To implement the statutory amendments, amendments are adopted to the following rules: §53.1, relating to definitions; §53.4, relating to qualifications for certification by companies offering qualified investment products that are annuity contracts; §53.5, relating to qualifications for certification by companies offering qualified investment products other than annuity contracts; §53.6, relating to procedure for certification; §53.7, relating to certification fee; §53.8, relating to list of certified companies; §53.12, relating to company notification of non-compliance; §53.13, relating to revocation of certification; and §53.14, relating to re-certification. In addition, the following new rules are adopted: §53.15, relating to product registration requirement; §53.16, relating to procedure for product registration; §53.18, relating to list of registered products; and §53.19, relating to proceedings to suspend or revoke certification or registration. The TRS Board also adopts new §53.17, relating to product registration fee as published elsewhere in this issue of the *Texas Register.*

With the recent enactment of House Bill 2427 (H.B. 2427), the legislature amended state law relating to TRS's administration of the 403(b) program. Act of May 23, 2007, 80th Leg., R.S., ch. 1230, §§17-25, 2007 Tex. Sess. Law Serv. (Vernon) (to be codified as amendments to Tex. Rev. Civ. Stat. art. 6228a-5, §§ 5, 6, 7, 8A, 9, 10, 11, and 13). H.B. 2427 expands TRS responsibilities with regard to the 403(b) program, relating primarily to company certification at this time, to include registration of qualified investment products offered by certified companies on or after January 1, 2008. The legislation also provides for suspension of company certification or product registration and provides that a proceeding to suspend or revoke company certification or product registration is a contested case proceeding. The adopted amendments and new rules implement the expansion of TRS responsibilities and the contested case requirements.

The adopted amendments to §53.1 add definitions for the words "product" and "register" to clarify the meaning of other rules containing those terms.

The adopted amendments to §53.4 add a new subsection (b)(4) to require that in order to certify to its qualifications, a company that offers qualified investment products that are annuity contracts must certify that its products comply with applicable product registration requirements.

The adopted amendments to §53.5 add a new subsection (b)(7) to require that in order to certify to its qualifications, a company that offers qualified investment products other than annuity contracts must certify that its products comply with applicable product registration requirements.

The adopted amendments to §§53.6, 53.7, and 53.8 modify existing rule text and add new provisions as needed to reflect new statutory provisions relating to denial or suspension of certification. Specifically, the word "deny" replaces "reject" to be consistent with the terminology of statutory amendments, and a reference to suspension of certification is added to reflect this new authority. TRS also amends §§53.6, 53.7, and 53.8 to reflect that a company may withdraw certification voluntarily.

The adopted amendments to §53.12 require a certified company to notify TRS of non-compliance if it offers a product that is required to be registered but is not registered. The adopted amendments also modify existing rule text for the reasons described above with respect to §§53.6, 53.7, and 53.8.

The adopted amendments to §53.13 change the title of the section and rule text to include a reference to "suspension" of a certification, in accordance with statutory amendments that now allow TRS to suspend a certification. The adopted amendments also provide that suspension or revocation of certification results in automatic suspension or revocation of registration of all company products and removal of the products from the TRS list; that upon termination of a suspension, the company and products will be restored to the list; and that a proceeding for suspension or certification is according to §53.19, relating to proceedings to suspend or revoke certification or registration.

The adopted amendments to §53.14 modify existing rule text by replacing the word "reject" with "deny" with respect to re-certification to be consistent with the terminology of statutory amendments. TRS also amends §53.14 to reflect that a company may withdraw certification voluntarily.

Adopted new §53.15 establishes the applicability of the product registration requirements, including with respect to products that are the subject of a salary reduction agreement entered into before January 1, 2008. In connection with applicability, the adopted rule clarifies treatment of a product that is the subject of a salary reduction agreement entered into before January 1, 2008, but modified on or after January 1, 2008, with respect to the amount of the contribution under the agreement. The adopted new rule also establishes the twice annual open registration periods for product registration; specifically delegates to the TRS executive director or his designee the authority to establish the form and content of the registration application; and provides that only certified companies may register their qualified investment products.

Adopted new §53.16 establishes the procedure for product registration. The adopted rule provides that a company may register only products for which the company has properly certified to offer and requires that to register products, a company must pay the fee established by TRS and submit all required information in the format required, including electronically if so required. The adopted rule also requires a company to submit information regarding all fees that are charged in connection with the registered product and to provide information regarding fees charged by other entities that are deducted from contributions made by salary reduction agreement, as required by TRS. The adopted rule also contains provisions to clarify administrative processes, such as the date on which registration is effective and expires; the process for adding products after initial registration to offer products and updating information between open registration periods; the requirement to correct information in a timely manner; the grounds for denial of registration; processes relating to suspension, withdrawal, revocation, and expiration of registration, including the requirement that the company cease collecting contributions made by salary reduction agreement when the product that is the subject of the agreement is no longer registered; and a process for company notification to TRS when a company product no longer is offered as the subject of new salary reduction agreements.

Adopted new §53.18 provides for the addition and removal of registered products on the TRS Web site list.

Adopted new §53.19 provides for contested case proceedings to suspend or revoke company certification or product registration. Upon an adverse decision by the TRS chief operating officer revoking or suspending registration, certification, or re-certification, a company may appeal to the TRS executive director. Because TRS has extensive contested case rules in Chapter 43 (34 TAC Chapter 43) applicable to appeals relating to pension plan matters, this adopted rule cross-references those rules in order to avoid repeating lengthy procedural rules applicable to an appeal to the TRS executive director. Those rules provide for the docketing of an eligible appeal, referral for a contested case hearing, procedures applicable during the hearing process, the entry of an executive director decision following a hearing and recommendation by an administrative law judge, and the availability of an appeal to the TRS board of trustees.

TRS received no public comments regarding the proposed amendments and new rules.

Statutory Authority: The amendments and new rules are adopted under the following statutes: §6(a) of Article 6228a-5, Vernon's Texas Civil Statutes, which authorizes TRS, after consultation with the Texas Department of Insurance and the State Securities Board, to adopt rules to administer §§5, 6, 7, 8, 8A, 11, 12, and 13 of Article 6228a-5 relating to 403(b) company certification and product registration; and §825.102, Government Code, which authorizes the Board to adopt rules for the administration of the funds of the retirement system.

Cross-Reference to Statute: The amendments and new rules affect Article 6228a-5, Vernon's Texas Civil Statutes.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on October 9, 2007.

TRD-200704832
Ronnie G. Jung
Executive Director
Teacher Retirement System of Texas
Effective date: October 29, 2007
Proposal publication date: August 10, 2007
For further information, please call: (512) 542-6438

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34 TAC §53.17

The Board of Trustees (Board) of Teacher Retirement System of Texas (TRS or system) adopts new §53.17, regarding the product registration fee to be paid by companies offering qualified

investment products through what are commonly referred to as "403(b) plans," which educational institutions make available to their employees. The new section is adopted with changes to the proposed text as published in the August 10, 2007, issue of the *Texas Register* (32 TexReg 4948).

The 80th Legislature, Regular Session (2007) amended Article 6228a-5, Vernon's Texas Civil Statutes, to require that companies register products offered on or after January 1, 2008. The statutory amendments also authorize TRS to collect a fee from a company that registers a product as required by the new provisions. Under Article 6228a-5, § 8A(e), V.T.C.S., registration would remain in effect for five years, unless denied, revoked, suspended, or withdrawn. The product registration fee would thus be payable every five years. New §53.17 establishes a fee of $3,000 payable when a company submits an application to TRS to register products. The fee amount in the adopted section is changed from the proposed $5,000 amount published for public comment in the *Texas Register* issue cited above. Legal counsel for the system has advised that republication of the adopted section as a proposed new rule is not required because the changed fee amount is a logical outgrowth of the proposed rule as published, does not materially alter the issues raised in the proposed rule, presents no new subjects of regulation, affects no new persons besides those previously given notice, and compliance with the adopted section will be less burdensome than under the proposed section.

No comments were received regarding adoption of the new rule.

Statutory Authority: The new rule is adopted under the following statutes: Article 6228a-5, §6, V.T.C.S., which authorizes the Board to adopt rules for the collection of the 403(b) product registration fee, and §825.102, Government Code, which authorizes the Board to adopt rules for the administration of the funds of the retirement system.

Cross-reference to Statute: The new rule affects Article 6228a-5, V.T.C.S., §7, which authorizes TRS to collect a product registration fee in a reasonable amount necessary to recover the cost to the system of administering of the 403(b) product registration program, and §8A, which authorizes TRS to establish a program for registering qualified 403(b) products.

§53.17. Product Registration Fee.

(a) A company shall pay a registration fee of $3,000 to the retirement system when the company submits an application to register products.

(b) If TRS denies the application to register products, TRS may retain the amount of the registration fee sufficient to reimburse the retirement system for its administrative costs associated with review of the application. The retirement system may hold the entire registration fee for at least thirty business days after notice that the application is not acceptable in order to determine whether the company will pursue registration by supplementing or revising its application.

(c) No portion of a registration fee is refundable if the retirement system suspends or revokes a registration or if a company withdraws a registration before the end of the registration period.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on October 9, 2007.

TRD-200704833
Ronnie G. Jung
Executive Director
Teacher Retirement System of Texas
Effective date: October 29, 2007
Proposal publication date: August 10, 2007
For further information, please call: (512) 542-6438

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 2. DEPARTMENT OF ASSISTIVE AND REHABILITATIVE SERVICES

CHAPTER 108. DIVISION FOR EARLY CHILDHOOD INTERVENTION SERVICES

SUBCHAPTER A. EARLY CHILDHOOD INTERVENTION SERVICE DELIVERY

40 TAC §§108.23, 108.27, 108.47, 108.48

The Texas Health and Human Services Commission (HHSC), on behalf of the Department of Assistive and Rehabilitative Services (DARS), adopts the amendments to §§108.23, Definitions, 108.27, Program Administration for Comprehensive Services and new §108.47, Early Intervention Specialist Code of Ethics and §108.48, Violations of the EIS Code of Ethics, without changes to the proposed text as published in the August 17, 2007, issue of the *Texas Register* (32 TexReg 5157) and will not be republished.

The amendments and new rules are being adopted to provide updated definitions; to provide changes to continuing professional education; to add an Early Intervention Specialist Code of Ethics; and to provide information regarding violations of ethical standards.

DARS received one comment regarding the proposed rules during the 30-day comment period. The comment and DARS' response are addressed as follows:

COMMENT

DARS received the following comment from the Texas Department of State Health Services: "HIPAA is not mentioned."

DARS RESPONSE

Early Childhood Intervention is not a covered entity and is not regulated by HIPAA, which is the Health Insurance Portability and Accountability Act. Therefore, DARS did not need to modify the rules to address this comment.

The amendments and new rules are adopted under Government Code, Chapter 531, §531.0055(e), which provides the Executive Commissioner of the Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services by health and human services agencies, which includes DARS.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on October 11, 2007.

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TRD-200704854
Sylvia F. Hardman
General Counsel
Department of Assistive and Rehabilitative Services
Effective date: October 31, 2007
Proposal publication date: August 17, 2007
For further information, please call: (512) 424-4050

REVIEW OF AGENCY RULES

This section contains notices of state agency rules review as directed by the Texas Government Code, §2001.039. Included here are (1) notices of *plan to review;* (2) notices of *intention to review,* which invite public comment to specified rules; and (3) notices of *readoption,* which summarize public comment to specified rules. The complete text of an agency's *plan to review* is available after it is filed with the Secretary of State on the Secretary of State's web site (http://www.sos.state.tx.us/texreg). The complete text of an agency's rule being reviewed and considered for *readoption* is available in the *Texas Administrative* Code on the web site (http://www.sos.state.tx.us/tac).

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the web site and printed copies of these notices may be directed to the *Texas Register* office.

Proposed Rule Reviews

Texas Department of Insurance, Division of Workers' Compensation

Title 28, Part 2

The Texas Department of Insurance, Division of Workers' Compensation files this notice of intention to review the rules contained in Chapter 143 concerning Dispute Resolution Review by the Appeals Panel. This review is pursuant to the General Appropriations Act, Article IX, §167, 75th Legislature, the General Appropriations Act, Section 9-10, 76th Legislature, and Texas Government Code §2001.039 as added by SB-178, 76th Legislature.

The Division's reason for adopting the following rules contained in this chapter continues to exist and it proposes to readopt these rules:

§143.1. Definitions.

§143.2. Description of the Appeal Proceeding.

§143.3. Requesting the Appeals Panel to Review the Decision of the Hearing Officer.

§143.4. Responding to a Request for Review by the Appeals Panel.

§143.5. Decision of the Appeals Panel.

Comments regarding whether the reason for adopting these rules continues to exist must be received by 5:00 p.m. on November 26, 2007, and submitted to Victoria Ortega, Legal Services, Texas Department of Insurance, Division of Workers' Compensation, 7551 Metro Center Drive, Suite 100, MS-4D, Austin, Texas 78744-1609.

TRD-200704868
Norma Garcia
General Counsel
Texas Department of Insurance, Division of Workers' Compensation
Filed: October 15, 2007

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The Texas Department of Insurance, Division of Workers' Compensation files this notice of intention to review the rules contained in Chapter 169 concerning Workers' Health and Safety--Drug-Free Workplace Program. This review is pursuant to the General Appropriations Act, Article IX, §167, 75th Legislature, the General Appropriations Act, Section 9-10, 76th Legislature, and Texas Government Code §2001.039 as added by SB-178, 76th Legislature.

The Division's reason for adopting the following rules contained in this chapter no longer exists and; therefore, the repeal of these rules is recommended.

§169.1. Notification of Drug Abuse Policy.

§169.2. Required Elements of Drug Abuse Policy.

Comments regarding whether the reason for adopting these rules continues to exist must be received by 5:00 p.m. on November 26, 2007, and submitted to Victoria Ortega, Legal Services, Texas Department of Insurance, Division of Workers' Compensation, 7551 Metro Center Drive, Suite 100, MS-4D, Austin, Texas 78744-1609.

TRD-200704867
Norma Garcia
General Counsel
Texas Department of Insurance, Division of Workers' Compensation
Filed: October 15, 2007

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Texas Racing Commission

Title 16, Part 8

The Texas Racing Commission files this notice of intent to review Chapter 311, Other Licenses. This review is conducted pursuant to the Texas Government Code, §2001.039, which requires state agencies to review and consider for readoption their administrative rules every four years. The rules being reviewed by the Commission are organized under the following subchapters: Subchapter A, Licensing Provisions; Subchapter B, Specific Licenses; Subchapter C, Responsibilities of Individuals; and Subchapter D, Alcohol and Drug Testing.

The review shall assess whether the reasons for initially adopting the rules continue to exist and whether any changes to the rules should be made.

All comments or questions in response to this notice of rule review may be submitted in writing to Gloria Giberson, Assistant to the Executive Director for the Texas Racing Commission, at P.O. Box 12080, Austin, Texas 78711-2080, telephone (512) 833-6699, or fax (512) 833-6907. The Commission will accept public comments regarding the chapter and the rules within it for 30 days following publication of this notice in the *Texas Register.*

Any proposed changes to the rules within Chapter 311 as a result of the review will be published in the Proposed Rules section of the *Texas Register* and will be open for an additional 30-day public comment period prior to final adoption or repeal by the Commission.

TRD-200704892
Mark Fenner
General Counsel
Texas Racing Commission
Filed: October 15, 2007

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TABLES & GRAPHICS

Graphic images included in rules are published separately in this tables and graphics section. Graphic images are arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic images are indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word "Figure" followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph, and so on.

Figure: 16 TAC §3.80(a)

Table 1. Railroad Commission Oil and Gas Division Forms

Form Number	Form Title	Creation or Last Revision Date (* No date available)	Statewide Rule Number (16 TAC § __) or Other Authority
AOF-1	Field Application for AOF Status	10/95	3.31
AOF-2	Individual Operator Application for AOF Status	10/95	3.31
AOF-3	Operator's Review of AOF Status	12/95	3.31
C-1	Carbon Black Plant Report	7/66	3.54, 3.63
C-2	Application for Permit to Operate a Carbon Black Plant	7/66	3.54, 3.63
C-3	Permit to Operate Carbon Black Plant	12/67	3.54, 3.63
CF-1	Commercial Facility Bond	8/98	3.78
CF-2	Commercial Facility Irrevocable Letter of Credit	8/98	3.78
G-1	Gas Well Back Pressure Test, Completion or Recompletion Report, and Log	4/83	3.4, 3.9, 3.16, 3.28, 3.31
G-3	Gas Storage Data Sheet	10/94	3.96, 3.97
G-5	Gas Well Classification Report	1/86	3.53
G-9	Gas Cycling Report	4/71	
G-10	Gas Well Status Report	9/00	3.28, 3.53, 3.55, 3.71
GC-1	Gas Well Capability	5/92	3.31
GT-1	Geothermal Production Test, Completion or Recompletion Report, and Log	01/76	3.4, 3.16, 3.33
GT-2	Producer's Monthly Report of Geothermal Wells	01/76	Tex. Nat. Res. Code, Ch. 141
GT-3	Monthly Geothermal Gatherer's Report	01/76	Tex. Nat. Res. Code, Ch. 141
GT-4	Producer's Certificate of Compliance and Authorization to Transport Geothermal Energy and/or Natural Gas and/or Other Minerals	01/76	Tex. Nat. Res. Code, Ch. 141
GT-5	Application to Inject Fluid into a Reservoir Productive of Geothermal Resources	9/75	Tex. Nat. Res. Code, Ch. 141
H-1	Application to Inject Fluid into a Reservoir Productive of Oil or Gas	05/01/04	3.46
H-1A	Injection Well Data for H-1 Application	05/01/04	3.46
H-1S	Injection Well Area Permit	12/98	3.46
H-2	Permit Application to Create, Operate and Maintain a Brine Mining Facility	5/99	3.81
H-4	Application to Create, Operate and Maintain an Underground Hydrocarbon Storage Facility	4/82	3.95, 3.97
H-5	Disposal/Injection Well Pressure Test Report	6/85	3.9, 3.46, 3.96
H-7	Fresh Water Data Form	3/68	3.46
H-8	Crude Oil, Gas Well Liquids, or Associated Products Loss Report	6/70	3.20
N/A	Interim H-8 Crude Oil Spill Sheet	12/93	3.20
H-9	Certificate of Compliance, Statewide Rule 36 (Hydrogen Sulfide)	12/77	3.36
H-10	Annual Disposal/Injection Well Monitoring Report (RRC computer-generated)	7/95	3.9, 3.46
H-10H	Annual Well Monitoring Report Underground Storage in Salt Formations	7/95	3.95, 3.96, 3.97

Form Number	Form Title	Creation or Last Revision Date (* No date available)	Statewide Rule Number (16 TAC § __) or Other Authority
H-11	Application for Permit to Maintain and Use a Pit	5/84	3.8
H-12	New or Expanded Enhanced Oil Recovery Project and Area Designation Approval Application	10/03	3.50
H-12 A	**Application for Certification for Additional Tax Rate Reduction for Enhanced Oil Recovery Projects Using Anthropogenic Carbon Dioxide**	**10/2007**	**3.50**
H-13	EOR Positive Production Response Certification Application	4/90	3.50
H-14	Enhanced Oil Recovery Reduced Tax Annual Report	[~~2/93~~] **10/2007**	3.50
H-15	Test on an Inactive Well More than 25 Years Old	8/93	3.14
H-20	Hazardous Oil and Gas Waste Generator (and Transporter) Notification	6/96	3.98
H-21	Annual Hazardous Oil and Gas Waste Report	10/01	3.98
L-1	Electric Log Status Report	1/02	3.16
MD-1	Optional Operator Market Demand Forecast for Gas Well Gas in Prorated Fields	5/92	3.31
OW-1	Application for Authority to Conduct a Surface Inspection of Orphaned Oil or Gas Wells	04/2006	Tex. Nat. Res. Code, §89.060
OW-2	Application for Certificate of Designation as the Operator of Orphaned Oil or Gas Wells	04/2006	Tex. Nat. Res. Code, §89.060
OW-3	Application for Payment for Reactivating or Plugging an Orphaned Oil or Gas Well	04/2006	Tex. Nat. Res. Code, §89.060
PR	Monthly Production Report	New Form effective for production reports filed for 01/05 or after 5:00 pm CT 02/11/05	3.27, 3.54, 3.58
P-1B	Producer's Monthly Supplemental Report	9/90	3.50, 3.80
P-3	Authority to Transport Recovered Load or Frac Oil	3/77	3.58
P-4	Producer's Certificate of Compliance and Transportation Authority	5/02	3.1, 3.14, 3.30, 3.58, 3.73, 3.78
P-5	Organization Report	1/87	3.1
P-5 IWB	Individual Well Bond	11/00	3.78
P-5 IWLC	Individual Well Irrevocable Documentary Letter of Credit	1/02	3.78
P-5LC	Irrevocable Documentary Blanket Letter of Credit	[~~2/01~~] **11/2007**	3.78
P-5 PB(1)	Individual Performance Bond	2/01	3.78
P-5PB(2)	Blanket Performance Bond	2/01	3.78
P-5S	P-5 Supplemental Officer Listing	9/91	3.1
[~~N/A~~]	[~~Franchise Tax Certification (The Commission will accept a copy of the Certificate of Account Status from the Texas Comptroller of Public Accounts in lieu of the Commission's form.)~~]	[~~11/01~~]	[~~3.1~~]
P-6	Request for Permission to Consolidate/Subdivide Leases	5/02	3.26, 3.27, 3.38, 3.39, 3.58
P-7	New Field Designation and/or Discovery Allowable Application	2/89	3.41, 3.42
P-8	Request for Clearance of Storage Tanks Prior to Potential Test	12/82	3.58
P-12	Certificate of Pooling Authority	5/01	3.31, 3.38, 3.40

Form Number	Form Title	Creation or Last Revision Date (* No date available)	Statewide Rule Number (16 TAC § __) or Other Authority
P-13	Application of Landowner to Condition an Abandoned Well for Fresh Water Production	[~~9/79~~] 10/2004	3.14
P-15	Statement of Productivity of Acreage Assigned to Proration Units	5/71	3.31
P-17	Application for Exception to Statewide Rules 26 and/or 27 (Commingling)	[~~1/78~~] 11/2007	3.26, 3.27
[~~P-17A~~]	[~~Interim Commingling / Measurement Application Supplement~~]	[~~6/97~~]	[~~3.26, 3.27~~]
P-18	Skim Oil/Condensate Report	1/86	3.56
PS-79	Application for a Permit to Construct a Sour Gas Pipeline Facility	3/98	3.106
R-1	Monthly Report and Operations Statement for Refineries	1974	3.61
R-2	Monthly Report for Reclaiming and Treating Plants	12/77	3.8, 3.57
R-3	Monthly Report for Gas Processing Plants	10/00	3.54, 3.56, 3.60, 3.62
R-4	Gas Processing Plant Report of Gas Injected	9/75	3.54
R-5	Certificate of Compliance (Gasoline Plants and Refineries)	3/72	3.61
R-6	Application for Certificate of Compliance (Cycling Plant)	9/75	3.62
R-7	Pressure Maintenance & Repressuring Plant Report	*	3.54
R-9	Application for Permit to Operate Reclamation Plant	2/90	3.57
S-10	Application for Transfer of Allowable, Casing Leak Well East Texas Field)	2/89	Field Rules
ST-1	Application for Texas Severance Tax Incentive Certification	10/03	3.83, 3.101, 3.103
T-1	Monthly Transportation & Storage Report	3/72	3.59
T-4, T-4A, T-4C	Forms relating to pipeline permits; under jurisdiction of the Safety Division	T-4: 9/99 T-4A: 4/99 T-4C: 4/97	3.70
T-6	Pipeline Company Monthly Report of Gas Exported from Texas	1948	Exec. Order
T-7	Dist. 10 Panhandle Fields Monthly Gas Gatherer Report	6/91	Dkt. 10-87017
VCP-1	Voluntary Cleanup Program Application	11/03	4.401-4.405
VCP-2	Voluntary Cleanup Program Agreement	11/03	4.401-4.405
W-1	Application to Drill, Deepen, Plug Back, or Reenter	9/01 (Revision effective 07/01/04)	3.5
W-1A	Substandard Acreage Drilling Unit Certification	5/01	3.38
W-1D	Supplemental Directional Well Information	07/01/04	3.5
W-1H	Supplemental Horizontal Well Information	07/01/04	3.5
[~~W-1X~~]	[~~Application for Future Re-Entry of Inactive Wellbore and 14(b)(2) Extension Permit~~]	[~~10/03~~]	[~~3.14, 3.78~~]
W-2	Oil Well Potential Test, Completion or Recompletion Report, and Log	4/83	3.4, 3.9, 3.16, 3.46, 3.51
W-3	Plugging Record	12/92	3.14
W-3A	Notice of Intention to Plug and Abandon	1/83	3.14
W-4	Application for Multiple Completion	8/69	3.6
W-4A	Sketch of Multiple Completion Installation	8/69	3.6
W-5	Packer Setting Report	8/69	3.6
W-6	Communication or Packer Leakage Test	1/70	3.6
W-7	Bottom-hole Pressure Report	*	3.41
W-9	Net Gas-Oil Ratio Report	7/69	RRC Order, §49
W-10	Oil Well Status Report	7/95	3.26, 3.27, 3.52, 3.53

Form Number	Form Title	Creation or Last Revision Date (* No date available)	Statewide Rule Number (16 TAC § __) or Other Authority
W-12	Inclination Report	1/71	3.11
W-14	Application to Dispose of Oil & Gas Waste by Injection into a Porous Formation Not Productive of Oil or Gas	1/82 Revision effective 05/01/04	3.9
W-15	Cementing Report	4/83	3.8, 3.13, 3.14
WH-1	Application for Oil and Gas Waste Hauler's Permit (formerly Application for Salt Water Hauler's Permit)	4/94	3.8
WH-2	Oil and Gas Waste Hauler's List of Vehicles (formerly Salt Water Hauler's Permit Bond)	4/94	3.8
WH-3	Oil and Gas Waste Hauler's Authority to Use Approved Disposal/Injection System	4/94	3.8
W-21	Application for Exception to Statewide Rule 21 to Produce by Swabbing, Bailing, or Jetting	2/03	3.21
Data Sheet	SWR 32 Exception Data Sheet	2/99	3.32
Data Sheet	SWR 10 Exception Data Sheet	*	3.10
EPA 8700-12	RCRA Subtitle C Site Identification Form (not an RRC form but required)	01/04	3.98
N/A	Claim for Proceeds of Salvage	9/94	Tex. Nat. Res. Code, §89.086
N/A	Request for Notice by Lienholder or Non-Operator	9/94	Tex. Nat. Res. Code, §§89.043(c), 89.085(f), 91.115(f)
SAD	Security Administrator Designation (SAD) Form	07/04	3.80

Figure: 16 TAC Chapter 8 - Preamble

	Cost per Employee for			
For a system on which there are	Sole Proprietorship (1 employee)	Micro-Business (5 employees)	Small Business (50 employees)	Large Business (1,000 employees)
No leaks; no increased cost of compliance	$ 0	$ 0	$ 0	$ 0
Seven leaks; additional 70 minutes reporting	$ 51.33	$ 10.26	$ 1.03	$ 0.05
200 leaks; additional 33.3 hours reporting	$ 1,465.20	$ 293.04	$ 29.30	$ 1.47
3,000 leaks; additional 500 hours reporting	$22,000.00	$4,400.00	$440.00	$22.00

Figure 1: 16 TAC §8.101(b)(2)

GAS TRANSMISSION [~~AND GATHERING~~] LINES				
Size	**Pressure**	**Class 2, 3, 4**	**Class 1**	**Offshore**
Less than or equal to 8 inches	Less than 100 psig	n/a	n/a	Intervals prescribed by operator
	Greater than 100 psig and less than 20% SMYS	10 year intervals	n/a	Intervals prescribed by operator
	Greater than 20% SMYS	5 year intervals	n/a	Intervals prescribed by operator
Greater than 8 inches	Less than 100 psig	n/a	n/a	Intervals prescribed by operator
	Greater than 100 psig and less than 20% SMYS	5 year intervals	n/a	Intervals prescribed by operator
	Greater than 20% SMYS	5 year intervals	10 year intervals	Intervals prescribed by operator

Figure: 16 TAC §8.135(d)

Table 1. Typical Penalties.

Rule	Guideline Penalty Amount
16 TAC §3.70-Pipeline Permits Required	$1,000
16 TAC §8.1-General Applicability and Standards	$5,000
16 TAC §8.51-Organization Report	$1,000
16 TAC §8.101-Pipeline Integrity Assessment and Management Plans	$5,000
16 TAC §8.105-Records	$5,000
16 TAC §8.110-Operations and Maintenance Procedures	$5,000
16 TAC §8.115-Construction Commencement Report	$5,000
16 TAC §8.201-Pipeline Safety Program Fees	10% of amt. due
16 TAC §8.203-Supplemental Regulations	$5,000
16 TAC §8.205-Written Procedure for Handling Natural Gas Leak Complaints	$1,000
16 TAC §8.210-Reports	$5,000
16 TAC §8.215-Odorization of Gas	$5,000
16 TAC §8.220-Master Metered Systems	$5,000
16 TAC §8.225-Plastic Pipe Requirements	$5,000
16 TAC §8.230-School Piping Testing	$1,000
16 TAC §8.235-Natural Gas Pipelines Public Education and Liaison	$5,000
16 TAC §8.240-Discontinuance of Service	$10,000
16 TAC §8.301-Records and Reporting	$5,000
16 TAC §8.305-Corrosion Control	$2,500
16 TAC §8.310-Hazardous Liquids and Carbon Dioxide Public Education and Liaison	$5,000
16 TAC §8.315-Hazardous Liquids and Carbon Dioxide Pipeline Located within 1,000 Feet of Public School	$2,500
49 CFR 192.613-Continuing surveillance	$5,000
49 CFR 192.619-Maximum allowable operating pressure	$5,000
49 CFR 192.625-Odorization of gas	$5,000
49 CFR 192 Subpart N-Qualification of Pipeline Personnel	$2,500
49 CFR 192, Subpart O-Pipeline Integrity Management	$5,000
49 CFR Part 192-Transportation of Natural and Other Gas by Pipeline	$1,000
49 CFR Part 193-Liquefied Natural Gas Facilities: Federal Safety Standards	$1,000
49 CFR Part 195-Transportation of Hazardous Liquids by Pipeline	$1,000
49 CFR Part 195.401-General Requirements	$5,000
49 CFR Part 195.406-Maximum Operating Pressure	$5,000
49 CFR Part 195.440-Public Awareness	$2,500
49 CFR Part 195.452-Integrity Management	$5,000
49 CFR Part 195 Subpart G-Qualification of Pipeline Personnel	$2,500
49 CFR Part 199-Drug and Alcohol Testing	$ 500

Figure: 16 TAC §8.135(e)

Table 2. Penalty Enhancements.

For violations that involve	Threatened or actual pollution	Threatened or actual safety hazard	Severity of violation or culpability of person charged
Bay, estuary, or marine habitat	$5,000 to $25,000		
Impact to a residential or public area		$1,000 to $15,000	
Hazardous material release		$2,000 to $25,000	
Reportable incident or accident		$5,000 to $25,000	
Exceeding pressure control limits		$5,000 to $20,000	
Affected area exceeds 100 square feet			$10 per square foot
Time out of compliance			$100 to $2,000 for each month
Reckless conduct of person charged			up to double the total penalty
Intentional conduct of person charged			up to triple the total penalty

Figure 1: 16 TAC §8.135(f)

Table 3. Penalty enhancements based on number of prior violations within seven years.

Number of violations in the seven years prior to action	Enhancement amount
One	$1,000
Two	$2,000
Three	$3,000
Four	$4,000
Five or more	$5,000

Figure 2: 16 TAC §8.135(f)

Table 4. Penalty enhancements based on total amount of prior penalties within seven years.

Total administrative penalties assessed in the seven years prior to action	Enhancement amount
Less than $10,000	$1,000
Between $10,000 and $25,000	$2,500
Between $25,000 and $50,000	$5,000
Between $50,000 and $100,000	$10,000
Over $100,000	10% of total amount

Figure: 16 TAC §8.135(i)

Table 5. Penalty calculation worksheet.

Typical penalties from Table 1		
1. 16 TAC §3.70-Pipeline Permits Required	$1,000	$
2. 16 TAC §8.1-General Applicability and Standards	$5,000	$
3. 16 TAC §8.51-Organization Report	$1,000	$
4. 16 TAC §8.101-Pipeline Integrity Assessment and Management Plans	$5,000	$
5. 16 TAC §8.105-Records	$5,000	$
6. 16 TAC §8.110-Operations and Maintenance Procedures	$5,000	$
7. 16 TAC §8.115-Construction Commencement Report	$5,000	$
8. 16 TAC §8.201-Pipeline Safety Program Fees	10% of amt. due	$
9. 16 TAC §8.203-Supplemental Regulations	$5,000	$
10. 16 TAC §8.205-Written Procedure for Handling Natural Gas Leak Complaints	$1,000	$
11. 16 TAC §8.210-Reports	$5,000	$
12. 16 TAC §8.215-Odorization of Gas	$5,000	$
13. 16 TAC §8.220-Master Metered Systems	$5,000	$
14. 16 TAC §8.225-Plastic Pipe Requirements	$5,000	$
15. 16 TAC §8.230-School Piping Testing	$1,000	$
16. 16 TAC §8.235-Natural Gas Pipelines Public Education and Liaison	$5,000	$
17. 16 TAC §8.240-Discontinuance of Service	$10,000	$
18. 16 TAC §8.301-Records and Reporting	$5,000	$
19. 16 TAC §8.305-Corrosion Control	$2,500	$
20. 16 TAC §8.310-Hazardous Liquids and Carbon Dioxide Public Education and Liaison	$5,000	$
21. 16 TAC §8.315-Hazardous Liquids and Carbon Dioxide Pipelines Located within 1,000 Feet of Public School	$2,500	$
22. 49 CFR 192.613-Continuing surveillance	$5,000	$
23. 49 CFR 192.619-Maximum allowable operating pressure	$5,000	$
24. 49 CFR 192.625-Odorization of gas	$5,000	$
25. 49 CFR 192 Subpart N-Qualification of Pipeline Personnel	$2,500	$
26. 49 CFR Part 192, Subpart O-Pipeline Integrity Management	$5,000	$
27. 49 CFR Part 192-Transportation of Natural and Other Gas by Pipeline: Minimum Federal Safety Standards	$1,000	$
28. 49 CFR Part 193-Liquefied Natural Gas Facilities	$1,000	$
29. 49 CFR Part 195-Transportation of Hazardous Liquids by Pipeline	$1,000	$
30. 49 CFR Part 195.401-General Requirements	$5,000	$
31. 49 CFR Part 195.406-Maximum Operating Pressure	$5,000	$
32. 49 CFR Part 195.440-Public Awareness	$2,500	$
33. 49 CFR Part 195.452-Integrity Management	$5,000	$
34. 49 CFR Part 195 Subpart G-Qualification of Pipeline Personnel	$2,500	$
35. 49 CFR Part 199-Drug and Alcohol Testing	$ 500	$

36. Subtotal of typical penalty amounts from Table 1 (lines 1-35, inclusive)		$
37. Reduction for settlement before hearing: up to 50% of line 36 amt.	%	$
38. Subtotal: amount shown on line 24 less applicable settlement reduction (line 37)		$
Penalty enhancement amounts for threatened or actual pollution or safety hazard from Table 2		
39. Bay, estuary, or marine habitat	$5,000-$25,000	
40. Impact to a residential or public area	$1,000-$15,000	$
41. Hazardous material release	$2,000-$25,000	$
42. Reportable incident or accident	$5,000-$25,000	$
43. Exceeding pressure control limits	$5,000-$20,000	$
Penalty enhancements for severity of violation from Table 2		
44. Affected area exceeds 100 square feet	$10 / square foot	$
45. Time out of compliance	$100-$2,000 / mo.	$
46. Subtotal: amount on line 38 plus all amounts on lines 39 through 45, inclusive		$
Penalty enhancements for culpability of person charged from Table 2		
47. Reckless conduct of person charged	double line 34 amt.	$
48. Intentional conduct of person charged	triple line 34 amt.	$
Penalty enhancements for number of prior violations within past seven years from Table 3		
49. One	$1,000	$
50. Two	$2,000	$
51. Three	$3,000	$
52. Four	$4,000	$
53. Five or more	$5,000	$
Penalty enhancements for amount of penalties within past seven years from Table 4		
54. Less than $10,000	$1,000	$
55. Between $10,000 and $25,000	$2,500	$
56. Between $25, 000 and $50,000	$5,000	$
57. Between $50,000 and $100,00	$10,000	$
58. Over $100,000	10% of total amt.	$
59. Subtotal: line 46 plus amounts on lines 47 and/or 48 plus the amount shown on any one line from 49 through 58, inclusive		$
60. Reduction for demonstrated good faith of person charged		$
TOTAL PENALTY AMOUNT: amount on line 59 less any amount shown on line 60		$

Figure: 16 TAC Chapter 9 - Preamble

NFPA 54 PUBLICATIONS	Non-Member Cost	Member Cost
NFPA 30A, *Code for Motor Fuel Dispenser Facilities and Repair Garages,* 2003 edition	33.50	30.15
NFPA 37, *Standard for the Installation and Use of Stationary Combustion Engines and Gas Turbines,* 2002 edition	33.50	30.15
NFPA 51, *Standard for the Design and Installation of Oxygen-Fuel Gas Systems for Welding, Cutting, and Allied Processes,* 2002 edition	28.00	25.20
NFPA 52, Vehicular Fuel Systems Code, 2006 edition	36.50	32.85
NFPA 58, Liquefied Petroleum Gas Code, 2004 edition	42.50	38.25
NFPA 70, National Electrical Code, 2005 edition	75.00	67.50
NFPA 82, Standard on Incinerators and Waste, and Linen Handling Systems and Equipment, 2004 edition	33.50	30.15
NFPA 88A, Standard for Parking Structures, 2002 edition	28.00	25.20
NFPA 90A, Standard for the Installation of Air Conditioning and Ventilating Systems, 2002 edition	33.50	30.15
NFPA 90B, Standard for the Installation of Warm Air Heating and Air Conditioning Systems, 2006 edition	28.00	25.20
NFPA 96, Standard for Ventilation Control and Fire Protection of Commercial Cooking Operations, 2004 edition	33.50	30.15

NFPA 58 PUBLICATIONS	Non-Member Cost	Member Cost
NFPA 10, Standard for Portable Fire Extinguishers, 2007 edition	36.50	32.85
NFPA 13, Standard for the Installation of Sprinkler Systems, 2007 edition	70.00	63.00
NFPA 15, Standard for Water Spray Fixed Systems for Fire Protection, 2007 edition	36.50	32.85
NFPA 25, *Standard for the Inspection, Testing, and Maintenance of Water-Based Fire Protection Systems,* 2008edition	42.50	38.25
NFPA 30, Flammable and Combustible Liquids Code, 2008 edition	42.50	38.25
NFPA 30A, Code for Motor Fuel Dispensing Facilities and Repair Garages, 2008 edition	33.50	30.15
NFPA 51B, Standard for Fire Prevention in Use of Cutting and Welding Processes, 2003 edition	33.50	30.15
NFPA 55, Standard for the Storage, Use, and Handling of Compressed Gases and Cryogenic Fluids in Portable and Stationary Containers, Cylinders, and Tanks, 2005 edition	36.50	32.85
NFPA 59, Utility LP-Gas Plant Code, 2004 edition	33.50	30.15
NFPA 70, National Electrical Code, 2008 edition	75.00	67.50
NFPA 99, Standard for Health Care Facilities, 2005 edition	52.00	46.80

NFPA 54 PUBLICATIONS	Non-Member Cost	Member Cost
NFPA 211, Standard for Chimneys, Fireplaces, Vents, and Solid Fuel-Burning Appliances, 2003 edition	36.50	32.85
NFPA 409, Standard on Aircraft Hangars, 2004 edition	33.50	30.15
NFPA 853, Standard for the Installation of Station Fuel Cell Power Systems, 2003 edition	28.00	25.20
NFPA 1192, Standard on Recreational Vehicles, 2005 edition	33.50	30.15
Cost to Purchase All Referenced Publications	537.00	483.30
Average Cost Per Publication	35.80	32.22

NFPA Membership Costs -- $150.00

NFPA 58 PUBLICATIONS	Non-Member Cost	Member Cost
NFPA 101, Life Safety Code, 2006 edition	75.00	67.50
NFPA 160, Standard for the Use of Flame Effects Before an Audience, 2006 edition	33.50	30.15
NFPA 220, Standard on Types of Building Construction, 2006 edition	28.00	25.20
NFPA 251, Standard Methods of Tests of Fire Resistance of Building Construction and Materials, 2006 edition	33.50	30.15
NFPA 1192, Standard on Recreational Vehicles, 2005 edition	33.50	30.15
Cost to Purchase All Referenced Publications	695.50	625.95
Average Cost Per Publication	43.46	39.12

Figure: 16 TAC §9.35(c)

Classification	Action Criteria	Examples
Grade 1	Requires prompt action to protect life and property. The prompt action in some instances may require one or more of the following: 1. Implementation of company emergency plan 2. Evacuating premises 3. Blocking off an area 4. Rerouting traffic 5. Eliminating sources of ignition 6. Venting the area 7. Stopping the flow of gas by closing valves or other means 8. Notifying police and fire departments	1. Any leak which, in the judgment of operating personnel at the scene is regarded as an immediate hazard 2. Escaping gas that has ignited 3. Any indication of gas which has migrated into or under a building or into a tunnel 4. Any leak that can be seen, heard or felt and which is in a location that may endanger the general public or property
Grade 2	Many Grade 2 leaks, because of their location and magnitude, can be scheduled for repair on a normal routine basis with periodic re-inspection as necessary. Product may not be introduced into a container with a Grade 2 leak on a container appurtenance until the leak is repaired.	Any leak which, in the judgment of operating personnel at the scene, is NOT regarded as an immediate hazard shall be scheduled for repair, where no migration of gas into or under a building or into a tunnel is evident

Figure: 16 TAC §9.140(g)

§9.140. Uniform Protection Standards -- Table 1 *(Revised February 2008 ~~January 2007~~)*

Requirements	Self-service [~~Automatic~~] Dispenser Area	Storage Racks for DOT Portable or Forklift Containers	Licensee or Non-Licensee ASME 4001+ Gal. A.W.C.	Any Licensee Installation (DOT Container Filling and/or Service Station Only)
1. Red letters at least 2" high (or at least 1 1/4" high for storage racks for DOT portable or forklift cylinders) on white or aluminum background: NO SMOKING	*	*	*	*
2. Red letters at least 4" high on white or aluminum background: WARNING FLAMMABLE GAS			*	
3. Black letters at least 4" high: NO TRESPASSING AUTHORIZED PERSONNEL ONLY			*	
4. Letters at least ½" high: EXTINGUISH ALL PILOT LIGHTS AND OPEN FLAMES; VEHICLE MUST BE VACATED DURING FILLING PROCESS; TURN OFF ENGINE	*			*
5. Letters at least 2" high on each operating side of the dispenser: PROPANE	*			
6. Block letters at least 2" high on a background of contrasting color to the letters, including instructions on activation and visible from the point of transfer: PROPANE (or LP-GAS) EMERGENCY SHUTOFF	*		*	*
7. Letters at least 4" high on container or 1 1/4" high on cylinder exchange **or storage** rack indicating contents: LP-GAS or BUTANE or PROPANE and FLAMMABLE		*	*	*
8. Letters at least 4" high on a background of contrasting color to the letters, marked on both sides or both ends of any container holding unodorized gas: NOT ODORIZED			*	*
9. Letters at least 4" high: Name of Licensee (not required for non-licensee installations)			*	*

10. Letters at least 2" high on operating end of container: **W.P. _____,** WORKING PRESSURE ____, or WORK PRESS. ____			*	*
11. If more than one container, letters at least 2" high on operating end of each container: CONTAINER NO. _____ or TANK NO. _____			*	*
12. Letters at least 2" high on a background of contrasting color, readily visible to the public, stating: 24-Hour Emergency Number_____ (not required at non-licensee installations)	*	*	*	*
13. Lettering at least 3/4" high with the telephone number of the certified employee responsible for the outlet, and/or the operations supervisor, on a background of contrasting color, readily visible to the public (not required at non-licensee installations)	*		*	*

Figure: 16 TAC §9.313

Affected NFPA 54 Section	**Specific Action**	**Commission Rule(s) to be Followed or Other Comments (underlining shows added language; strike-outs show deleted language)**
5.6.4	additional requirements	See Comission rule §9.312, Certification Requirements for Joining Methods
Chapter 7	additional requirements	See Commission rule §9.308, Identification of Piping Installation
7.2.6	additional requirements	See Commission rule §9.311(c), Special Exceptions for Agricultural and Industrial Structures Regarding Appliance Connectors and Piping Support.
9.1.3	additional requirements	See Commission rule §9.307, Identification of Converted Appliances.
9.2.6	additional requirements	See Commission rule §9.311(a), Special Exceptions for Agricultural and Industrial Structures Regarding Appliance Connectors and Piping Support.
Chapter 10	additional requirements	See Commission rule §9.306, Room Heaters in Public Buildings.
10.29	not adopted	See Commission rule §9.303, Exclusion of NFPA 54, §10.29.

Figure: 16 TAC §9.403(a)

§9.403 Table--Sections in NFPA 58, 2008 Edition, Not Adopted by Reference, or Adopted With Changes, Additional Requirements, or Corrections (**Revised February 2008**)

Affected NFPA 58 Section	Specific Action	Commission Rule(s) to be Followed or Other Comments (underlining shows added language; strike-outs show deleted language)
~~1.7.11~~ 3.2.2	additional requirement	In addition to definition for "Authority Having Jurisdiction," see Commission rule §9.402(a), Clarification of Certain Terms Used in NFPA 58.
~~1.4.1~~ 4.3.1	not adopted	See Commission rules §9.27, Application for an Exception to a Safety Rule, and §9.101, Filings Required for Stationary LP-Gas Installations.
~~1.4.2~~ 4.3.2	not adopted	See Commission rules §9.101, Filings Required for Stationary LP-Gas Installations, and §9.102 (c), Notice of Stationary LP-Gas Installations.
~~1.5~~ 4.4	additional requirements	See Commission rule §9.10, Rules Examination, 9.51, General Requirements for Training and Continuing Education, and §9.52, Training and Continuing Education Courses.
5.2.1.1	additional requirements	See Commission rule §9.135, Unsafe of Unapproved Containers, Cylinders, or Piping and §9.137, Inspection of Containers at Each Filling
5.2.2	additional requirements	See Commission rule §9.135, Unsafe of Unapproved Containers, Cylinders, or Piping and §9.137, Inspection of Containers at Each Filling
~~2.2.2.2~~ 5.2.4.2	additional requirement	See Commission rule §9.131, 200 PSIG Working Pressure Stationary Vessels.
~~2.2.6.1~~ 5.2.8.1	additional requirement	See Commission rules §9.140 (g), Table 1, Uniform Protection Standards, and §9.141 (e), Uniform Safety Requirements.
~~2.2.6.3~~ 5.2.8.3	not adopted	See Commission rule §9.129, Manufacturer's Nameplate and Markings on ASME Containers.

~~2.2.6.4~~ 5.2.8.4(1)	with changes	Warning labels shall be applied to all cylinders of 4.2 lb (1.9 kg) to 100 lb (45.4 kg) LP-Gas capacity ~~or less~~ and not filled on site. The label shall include information on the potential hazards of LP-Gas.
~~2.2.6.5~~ 5.2.8.5	not adopted	See Commission rule §9.140, Table 1, Uniform Protection Standards.
~~2.3.1.5~~ 5.7.3.1	with changes	Cylinders with 4.2 lb (1.9 kg) ~~4 lb (1.8 kg)~~ through 40 lb (18 kg) propane capacity for vapor service shall be equipped or fitted with a listed overfilling prevention device that complies with UL 2227, *Overfilling Prevention Devices*, and a fixed maximum liquid level gauge. These devices shall be permitted to be a part of the container valve assembly.
~~2.3.2.3~~ 5.7.2.4 (A)	additional requirement	See Commission rule §9.131, 200 PSIG Working Pressure Stationary Vessels.
5.7.4.1	additional requirements and with changes	See Commission rules §9.9.143(e), Containers of 4000 gal ~~2000 gal~~ (7.6 m3) water capacity or less shall be fitted with valves and other appurtenances in accordance with Table 5.7.4.1. Shutoff, filler, check, and excess-flow valves shall comply with ANSI/UL 125, *Standard for Valves for Anhydrous Ammonia and LP-Gas (Other than Safety Relief)*, except that shutoff valves used on DOT cylinders shall comply with UL 1769, *Cylinder Valves*. Containers over 4000 gal (15.1 m3) ~~of 2001 gal through 4000 gal (7.6 m3 through 15.1 m3)~~ water capacity ~~in bulk plant and industrial plant service~~ shall be fitted with valves and other appurtenances in accordance with ~~Table~~ 5.7.4.2 as adopted with changes. ~~Containers of 2001 gal through 4000 gal (7.6 m3 through 15.1 m3) water capacity in other than bulk plant and industrial plant service shall be in accordance with Table 5.7.4.1.~~
~~Table 2.3.3.2(a)~~ Table 5.7.4.1	with changes	Heading: Container Connection and Appurtenance Requirements ~~for Containers Used in Other Than Bulk Plants and Industrial Plants~~ Column 1 Header: Cylinders 4.2 ~~2~~ Through 420 lb Propane Capacity Part F, Column 2: R (4.2 ~~4~~ thru 40 lb) (see 5.7.3)
~~2.3.3.2(a)(5)~~ 5.7.4.1(G)	with changes	Overfilling prevention devices shall be required on cylinders having 4.2 lb ~~4 lb~~ through 40 lb (1.9 ~~1.8~~ kg through 18 kg) propane capacity for vapor service. ~~*(See 2.3.1.5.)*~~ *(See 5.7.3)*

~~2.3.3.2(b)(2)~~ 5.7.4.2	with changes	ASME containers over 4000 gal (15.2 m3) water capacity shall be equipped in accordance with ~~5.7.4.2(A) through 5.7.4.2(G) and Table 5.7.4.2~~ the following: (A through I not adopted.) 1. Container openings 1¼ -inch or greater a. A pneumatically operated internal valve equipped for remote closure and automatic shutoff using thermal (fire) actuation where the thermal element is located within 5 ft (1.5 m) of the internal valve, or a double back flow check filler valve, or a positive shutoff valve in combination with a back flow check valve b. An internal valve installed in containers prior to February 1, 2001, shall be equipped for pneumatically-operated remote closure and automatic shutoff using thermal (fire) actuation as described above by February 1, 2003. c. Each container equipped with a positive shutoff valve that is located as close to the container as is practical in combination with an excess flow valve shall be retrofitted by February 1, 2006, with one of the following: 1. A pneumatically operated internal valve equipped for remote closure and automatic shutoff using thermal (fire) actuation installed directly into the container 2. A pneumatically operated emergency shutoff valve equipped for remote closure and automatic shutoff using thermal (fire) actuation installed in the line downstream within four feet of the existing positive shutoff valve. 3. A double back flow check filler valve 4. A positive shutoff valve in combination with a back flow check valve d. Any vapor or liquid withdrawal opening 1 1/4 inch or larger with piping attached that exclusively provides service to stationary appliances or equipment, which is not part of a transfer system, may be equipped with an excess flow valve and a shutoff valve installed as close as practical to the container, in lieu of an internal valve or emergency shutoff valve. e. For reducing the size of a container opening, only one bushing with a minimum pressure rating in accordance with Table 5.9.4.1 shall be installed. f. Container openings that are not compatible with internal valves shall be permitted to utilize both an excess-flow valve installed in the container and a valve complying with API 607, *Fire Test Soft-Seated Quarter Turn Ball Valves,* which shall be pneumatically actuated and shall fail in the closed position. 2. Container openings less than 1¼-inch

		a. A positive shutoff valve that is located as close to the container as practical in combination with either an excess-flow valve or a back flow check valve installed in the container, or b. A pneumatically operated internal valve with an integral excess-flow valve or excess-flow protection, or c. A double back flow check filler valve.
Table 5.7.4.2	not adopted	See NFPA 58 5.7.4.2 with changes
5.7.4.3	not adopted	See NFPA 5.7.4.1 with changes
5.7.4.5	with changes	The appurtenances specified in Table 5.7.4.1~~and 5.7.4.3~~ shall comply with the following: (1 - 6 no changes)
5.7.7.1	with changes	Other container openings shall be equipped with any of the following: (1 - 5 no change) (6) For reducing the size of a container opening, only one bushing with a minimum pressure rating in accordance with Table 5.9.4.1 shall be installed.
~~2.4.4.3~~ 5.9.5	additional requirement	See Commission rule §9.312(b), Certification Requirements for Joining Methods.
~~2.4.6~~ 5.9.6	additional requirement	See Commission rule §9.143(b) and (g), Bulkhead, Internal Valve, and ESV Protection for Stationary LP-Gas Installations with Individual or Aggregate Water Capacities of 4,001 Gallons or More.
~~2.4.4~~ 5.9.6.5	additional requirement	See Commission rule §9.311, Special Exceptions for Agricultural and Industrial Structures Regarding Appliance Connectors and Piping Support.
~~2.6.2.1~~ 5.20	additional requirement	See Commission rule §9.307, Identification of Converted Appliances.
~~3.2.2.1~~ 6.2.2	with changes	LP-Gas containers shall be located outside of buildings. 1: (no change.) 2: Containers from 1 gal (3.785 l) to ~~of less than~~ 125 gal (0.5 m^3) water capacity for the purposes of being filled in buildings or structures complying with Chapter 10. [3 – 7 no changes]

~~3.2.2.2~~ 6.3.1	additional requirement and with changes	In addition to ~~Table 1~~ 6.3.1, see Commission rule §9.142, LP-Gas Container Storage and Installation Requirements. Containers installed outside of buildings, whether of the portable type replaced on a cylinder exchange basis or permanently installed and refilled at the installation, shall be located with respect to the adjacent containers, important building, group of buildings, or line of adjoining property that can be built upon, in accordance with Table 6.3.1, Table 6.4.2, Table 6.4.5.8, and ~~6.32~~ 6.3.3 through 6.312.
6.3.2	not adopted	
~~3.2.2.3~~ 6.4.1	~~additional requirement~~ with changes	Where ~~storage~~ containers ~~having an aggregate water capacity of more than 4000 gal (15.1 m3)~~ are located in heavily populated or congested areas, the siting provisions of 6.3.1 and Table 6.3.1 shall be permitted to be modified by the ~~fire safety analysis described in 6.25.3~~ Commission.
~~3.2.2.8~~ 6.4.7	additional requirement	See Commission rule §9.141(f), Uniform Safety Requirements.
6.5.4	additional requirement	See Commission rule §9.101(c)(2), Filings Required for Stationary LP-Gas Installations
~~3.2.4.2~~ 6.6.1.2	additional requirement	See Commission rule §9.140, Uniform Protection Standards.
~~3.2.4.4~~ 6.6.1.4	additional requirement	See Commission rule §9.141(a), Uniform Safety Requirements.
~~3.2.5~~ 6.6.2.1	with changes	Cylinders shall be installed only aboveground, and shall be set upon a firm foundation of concrete, masonry, or metal and ~~or~~ be ~~otherwise~~ firmly secured against displacement. The cylinder shall not be in contact with the soil.
6.6.3.1	~~w~~with changes	Horizontal ASME containers designed for permanent installation in stationary service above ground shall be placed on masonry or other noncombustible structural supports located on concrete or masonry foundations with the container supports. Containers shall not be in contact with the soil.
~~3.2.9.1~~ 6.6.6.1 (a) - (d)	additional requirement	See Commission rule §9.140(d), Uniform Protection Standards.
~~3.2.9.2(d)~~ 6.6.6.2(6)	additional requirement	See Commission rule §9.140, Uniform Protection Standards.

~~3.2.12.1~~ 6.8.2(B)	with changes	Single-stage regulators shall not be installed in fixed piping systems on or after February 1, 2001 ~~June 30,1997~~, except for installations covered in 6.8.2(C). Single-stage regulators in good working order installed prior to February 1, 2001, may remain in service.
~~3.2.17~~ 6.9.6.1	additional requirement	See Commission rule §9.143, Bulkhead, Internal Valve, and ESV Protection for Stationary LP-Gas Installations with Individual or Aggregate Water Capacities of 4,001 Gallons or More.
6.9.6.2	with changes	Flexible metallic connectors shall not exceed 60 in. (1.52 m) in overall length when used with liquid or vapor piping on stationary containers. ~~of 2000 gal (7.6 m3) water capacity or less.~~
~~3.2.18.1~~ 6.11.1	with changes	The requirements of 6.11.2 through 6.11.5 shall be required for internal valves in liquid and/or vapor service installed on containers over 4000-gal (15.2-m^3) water capacity by July 1, 2003.
6.11.2	with changes	Internal valves shall be installed in accordance with 5.7.4.2 with changes ~~and Table 5.7.4.2~~ on containers over 4000 gal (15.2 m3) water capacity.
~~3.2.18.2~~ 6.11.3	with changes	Automatic shutdown of internal valves in liquid and/or vapor service shall be provided using thermal (fire) actuation. The thermal sensing element of the internal valve shall be within 5 ft (1.5 m) of the internal valve.
~~3.2.18.3~~ 6.11.4	with changes	At least one remote shutdown station for internal valves in liquid and/or vapor service shall be installed not less than 25 ft (7.6 m) or more than 100 ft (30 m) from the liquid transfer point. This shall be retroactive to all internal valves required by the code.
6.11.5	not adopted	See Commission rule §9.140 (g), Uniform Protection Standards, Table 1
~~3.2.19.1~~ 6.12	not adopted	See Commission rule §9.143, Bulkhead, Internal Valve, and ESV Protection for Stationary LP-Gas Installations with Individual or Aggregate Water Capacities of 4,001 Gallons or More.
~~3.2.24~~ 6.16.2	not adopted	
6.18.1	not adopted	See Commission rule §9.113.

~~3.3.6.1~~ 6.18.4.2	additional requirements	See Commission rule §9.140 (b) and (d), Uniform Protection Standards.
~~3.4.2.1~~ 6.19.2.1	with changes	Cylinders shall be in accordance with the following requirements: (1) - (4) (No change.) (5) Cylinders with LP-gas ~~propane~~ capacities greater than 4.2 lb (1.9 kg) ~~2 lb (0.9 kg)~~ shall be equipped as provided in Table 5.7.4.1, and an excess-flow valve shall be provided for vapor service when used indoors. (6) (No change.) (7) Cylinders having LP-gas ~~water~~ capacities greater than 4.2 lb (1.9 kg) ~~2.7 lb (1.2 kg)~~ and connected for use shall stand on a firm and substantially level surface. (8 – 9 No change)
~~3.4.2.4~~ 6.19.3.2	additional requirement	See Commission rule §9.140(b), Uniform Protection Standards.
~~3.4.2.7~~ 6.19.3.6	with changes	Transportation (movement) of cylinders having LP-gas ~~water~~ capacities greater than 4.2 lb (1.9 kg) ~~2.7 lb (1.2 kg)~~ within a building shall be restricted to movement directly associated with the uses covered by section 6.19. (~~a~~ A) Valve outlets on cylinders having LP-gas ~~water~~ capacities greater than 4.2 lb (1.9 kg) ~~2.7 lb (1.2 kg)~~ shall be tightly plugged, capped, or sealed with a listed quick-closing coupling or a listed quick-connect coupling. (~~b~~ B-C) (No change.)
~~3.4.4.1(b)~~ 6.19.5.1(2)	with changes	Cylinders having an LP-gas ~~a water~~ capacity greater than 4.2 lb (1.9 kg) ~~2.7 lb (1.2 kg)~~ shall not be left unattended.
6.19.5.2	with changes	During the hours the building is not open to the public, cylinders used and transported within the building for repair or minor renovation and with an LP-gas ~~water~~ capacity greater than 4.2 lb (1.9 kg) ~~2.7 lb (1.2 kg)~~ shall not be left unattended.
~~3.4.8.3~~ 6.19.9.3	not adopted	See Commission rule §9.1(e), Application of Rules, Severability, and Retroactivity.
~~3.4.8.4~~ 6.19.9.4	not adopted	See Commission rule §9.1(e), Application of Rules, Severability, and Retroactivity.
~~3.4.9.2~~ 6.19.11.2	with changes	Cylinders having LP-gas ~~water~~ capacities greater than 4.2 lb (1.9 kg) ~~2.7 lb (1 kg) [nominal 1 lb (0.5 kg)]~~ LP-

		Gas capacity shall not be located on decks or balconies of dwellings of two or more living units above the first floor unless they are served by exterior stairways.
6.20.2.1	with changes	Patio heaters utilizing an integral LP-Gas container greater than 4.2 lb (1.9 kg) ~~1.08 lb (0.49 kg)~~ propane capacity shall comply with 6.20.2.2 and 6.20.2.3.
~~3.7.2.2~~ 6.22.2.4	with changes	The provision of 6.22.2.2 shall not apply to fixed electrical equipment at residential ~~or commercial~~ installations of LP-Gas systems or to systems covered by Section 6.23.
6.24.3.7	additional requirements	See Commission rule §9.140(b), Uniform Protection Requirements
6.24.3.8	with changes	The container liquid withdrawal opening used with retail operated vehicle fuel dispensers and retail operated dispensing stations shall be equipped with one of the following: (1) – (2) (No change)
~~3.9.3.8~~ 6.24.3.12	additional requirement	See Commission rule §9.140(d), Uniform Protection Standards.
6.24.3.13	with changes	A listed quick-acting shutoff valve or a listed quarter turn ball valve with a locking handle shall be installed at the discharge end of the transfer hose.
~~3.9.3.10~~ 6.24.3.14	additional requirements	See Commission rule §9.140, Uniform Protection Standards, Table 1.
6.24.4.2	additional requirements	See Commission rule §9.141(b), Uniform Safety Requirements
~~3.10.2.1 6.25.2.1~~	~~additional requirement~~	~~See Commission rule §9.35, Written Procedure for LP-Gas Leaks.~~
~~3.10.2.2~~ 6.25.3	not adopted	Commission rules require all redundant safety features.
6.26	with changes	Alternate Provisions for Installation of Underground and Mounded ASME Containers.
~~4.2.3.8~~ 7.2.3.8	additional requirement	See Commission rule §9.140 (b), Uniform Protection Standards.

~~4.4.3.1~~ 7.4.2.1	additional requirement	See Commission rule §9.136, Filling of DOT Containers.
~~4.4.3.2~~ 7.4.3.1	with changes	The volumetric method shall be limited to the following containers, where they are designed and equipped for filling by volume: ~~(1) Cylinders of less than 200-lb (91-kg) water capacity that are not subject to DOT jurisdiction~~ (1) ~~(2)~~ Cylinders of 101 lb LP-gas capacity ~~200-lb (91-kg) water capacity~~ or more (2) ~~(3)~~ Cargo tanks or portable tanks ~~containers complying with DOT specifications MC-330, MC-331, or DOT 51~~ (3) ~~(4)~~ ASME and API-ASME containers complying with 5.2.1.1 or 5.2.4.2
~~5.2.1.1~~ 8.2.1.1	additional requirement	See Commission rule §9.140(b), Uniform Protection Standards.
8.3.1	not adopted	
Table 8.3.1(a)	not adopted	
Table 8.3.1(b)	with changes	Heading: Maximum Allowable Storage Quantities of LP-Gas in ~~Mercantile,~~ Industrial~~,~~ and Storage Occupancies Column 2 (Mercantile) Not Adopted
~~5.3.1~~ 8.3.2	not adopted	See Commission rule §9.1(e), Application of Rules, Severability, and Retroactivity.
~~5.4.2.1~~ 8.4.2.1	additional requirement	See Commission rule §9.140(b) and (d), Uniform Protection Standards.
~~5.4.2.2~~ 8.4.2.2	not adopted	See Commission rule §9.140(d), Uniform Protection Standards.
~~5.4.3~~ 8.4.3	not adopted	See Commission rule §9.27, Application for an Exception to a Safety Rule.
~~6.3.6~~ 9.4.6.2	Additional requirement	See Commission rule §9.211, Markings
~~6.5.2.1~~ 9.6.2.2(2)	with changes	Valves and fittings shall be protected by a method ~~approved by the authority having jurisdiction~~ to minimize the possibility of damage.

~~8.1.3~~ 11.2	additional requirements	See Commission rules §9.10, General Requirements for Training and Continuing Education, and §9.51, Training and Continuing Education Courses.
11.3.4	Not adopted	See Commission rule §9.129, Manufacturer's Nameplate and Markings on ASME Containers
~~8.2.3(l) 11.4.1.15~~	~~with changes~~	~~Where an overfilling prevention device is installed on an engine fuel container, venting of gas through a fixed maximum liquid level gauge during normal filling shall not be required provided: 1. The OPD is verified by the owner of the vehicle to be working properly; 2. The verification of the valve is documented yearly and clearly marked on the container in a visible location; and 3. The OPD is replaced every two years, documentation is kept by the owner of the vehicle, and the container is marked in a visible location verifying its replacement.~~
~~8.2.6.6~~ 11.7.4.1	with changes	Fuel containers shall be installed to prevent their jarring loose and slipping or rotating, and the fastenings shall be designed and constructed to withstand without permanent deformation static loading in any direction equal to four times the weight of the container filled with fuel. This shall not prohibit the use of specific mounting brackets designed and manufactured by a container manufacturer, original vehicle manufacturer, or the authorized representative of either. Each specific mounting bracket shall be marked in a visible location, to indicate the manufacturer of the bracket.
~~8.2.10~~ 11.11.2.2	with changes	The marking shall consist of a border and the word PROPANE [1 in. (25 mm) minimum height centered in the diamond] in silver or white reflective luminous material on a black or Pantone 2945 C Royal Blue or equivalent background.
Chapter ~~10~~ 13	not adopted	Commission authority does not extend to marine shipping and receiving activities.
14.1	with changes	Scope. This chapter includes requirements related to the operations and maintenance of ~~bulk plant, industrial plant, refrigerated, marine, and~~ pipeline LP-Gas systems. The provisions of this chapter shall be applicable to all new and existing installations.
14.4.3.3	Additional requirement	See Commission rules §9.36, Report of LP-Gas Incident/Accident.
14.4.9.1	Additional requirement	See Commission rules §9.35, Written Procedure for LP-Gas Leaks.

Figure: 16 TAC Chapter 11-Preamble

New Rule Number and Title	Former Rule Number and Title
Subchapter A. General Administrative Rules	
11.1. Practice and Procedure	11.1. Practice and Procedure
11.2. Definitions	11.12. Definitions 11.81. Statutory Definitions 11.82. Regulatory Definitions
11.3. Permit Processing	11.31. Public Notice 11.33. Comments and Objections 11.21. Who May Appear 11.34. Public Hearing 11.37. Revised Notice 11.52. Decision without Public Hearing
11.4. Temporary Orders Prior to Notice and Hearing	11.53. Temporary Orders Prior to Notice and Hearing
Subchapter B. Permits for Uranium Exploration and Surface Mining	
11.21. Purpose and Authority	11.71. Purpose and Authority
11.22. Applicability	11.72. Applicability
11.23. Confidentiality 11.24. Exploration Permit Required 11.25. Application for Exploration Activity 11.26. Exploration Permit Application Fees 11.27. Reclamation and Plugging Requirements 11.28. Plugging Report 11.29. Permit Renewal 11.30. Permit Amendment 11.31. Permit Transfer 11.32. Notification by the Commission 11.33. Information Provided to Groundwater Conservation Districts	
11.41. Uranium Surface Mining Permits	11.91. Term 11.92. Permit Application 11.93. Elements of Permit Application 11.94 Application Approval 11.96. Permit Issuance
11.42. Bonding, Insurance, and Payment of Fees	11.95. Bonding, Insurance, Payment of Fees
11.43. Surface Mining Permit Renewal	11.97. Renewal
11.44. Surface Mining Permit Transfer	11.98. Transfer
11.45. Surface Mining Permit Approval and Denial	11.99. Permit Approval; and 11.100 Permit Denial
11.46. Permit Changes	11.114. Revision on Motion or With Consent 11.115. Corrections
11.61. Procedure and Determination	11.161. Procedure for Petition 11.162. Determination of Petition Validity 11.163. Hearing on Petition 11.164. Petitions Not Received 11.167. Notice of Petition Determination
11.62. Elements of Unsuitability	11.165. Elements of Unsuitability 11.166. Notice of Existing Unsuitable Designation
Subchapter C. Designation of Lands Unsuitable for Surface Mining	

New Rule Number and Title	Former Rule Number and Title
11.71. Petition Procedure and Determination	11.161. Procedure For Petition 11.162. Determination of Petition Validity 11.163. Hearing on Petition 11.164. Petitions Not Received 11.167. Notice of Petition Determination
11.72. Elements of Unsuitability	11.165. Elements of Unsuitability 11.166. Notice of Existing Unsuitable Designation
Subchapter D. Reclamation, and Mine Closing and Release	
11.81. Reclamation Plan	11.151. Plan
11.82. Reclamation Standards	11.152. Standards
11.83. Alternative Reclamation Methods	11.153. Alternative Methods
11.84. Amendments	11.154. Amendments
11.85. Surface Mine Closing	11.181. Closing
11.86. Release	11.182. Release
Subchapter E. Reports and Reporting, and Performance Bonds	
11.91. Annual Report	11.191. Annual Report 11.192. Contents of Annual Report 11.194. Release from Reporting Requirement
11.92. Maintenance of Records	11.193. Maintenance of Records
11.93. Performance Bonds	11.201. Amount of Bond 11.202. Personal Bond 11.203. Duration of Liability 11.204. Form of Bond or Collateral 11.205. Changes in Coverage
11.94. Release or Reduction of Bonds	11.206. Release or Reduction of Bonds
Subchapter F. Enforcement by the Commission	
11.151. Scope 11.152. Inspections 11.153. Time and Procedures for Inspection 11.154. Violations Creating Imminent Danger or Causing Imminent Harm 11.155. Violations Not Creating Imminent Danger or Causing Imminent Harm 11.156. Continuous Violations 11.157. Notice of Violation or Cessation Order 11.158. Civil Action 11.159. Injunctive Relief and Civil Penalty 11.160. Administrative Penalty 11.161. Penalty Assessment Procedures 11.162. Payment of Penalty and Refund 11.163. Criminal Penalty for Violating Permits and Orders 11.164. Criminal Penalty for Corporate Permittee 11.165. Criminal Penalty for False Statement, Representation, or Certification	

Figure: 28 TAC §3.9504(b)

IMPORTANT NOTICE:
REPLACEMENT OF LIFE INSURANCE OR ANNUITIES
This document must be signed by the applicant and the agent
and a copy left with the applicant.

You are contemplating the purchase of a life insurance policy or annuity contract. In some cases this purchase may involve discontinuing or changing an existing policy or contract. If so, a replacement is occurring. Financed purchases are also considered replacements.

A replacement occurs when a new policy or contract is purchased and, in connection with the sale, you discontinue making premium payments on the existing policy or contract, or an existing policy or contract is surrendered, forfeited, assigned to the replacing insurer, or otherwise terminated or used in a financed purchase.

A financed purchase occurs when the purchase of a new life insurance policy involves the use of funds obtained by the withdrawal or surrender of or by borrowing some or all of the policy values, including accumulated dividends, of an existing policy to pay all or part of any premium or payment due on the new policy. A financed purchase is a replacement.

You should carefully consider whether a replacement is in your best interests. You will pay acquisition costs and there may be surrender costs deducted from your policy or contract. You may be able to make changes to your existing policy or contract to meet your insurance needs at less cost. A financed purchase will reduce the value of your existing policy and may reduce the amount paid upon the death of the insured.

We want you to understand the effects of replacements before you make your purchase decision and ask that you answer the following questions and consider the questions on the back of this form.

1. Are you considering discontinuing making premium payments, surrendering, forfeiting, assigning to the insurer, or otherwise terminating your existing policy or contract? ___ YES ___ NO

2. Are you considering using funds from your existing policies or contracts to pay premiums due on the new policy or contract? ___ YES ___ NO

   If you answered "yes" to either of the above questions, list each existing policy or contract you are contemplating replacing (include the name of the insurer, the insured or annuitant, and the policy or contract number if available) and whether each policy or contract will be replaced or used as a source of financing:

	INSURER NAME	CONTRACT OR POLICY #	INSURED OR ANNUITANT	REPLACED (R) OR FINANCING (F)
1.				
2.				
3.				

Make sure you know the facts. Contact your existing company or its agent for information about the old policy or contract. If you request one, an in force illustration, policy summary or available disclosure documents must be sent to you by the existing insurer. Ask for and retain all sales material used by the agent in the sales presentation. Be sure that you are making an informed decision.

The existing policy or contract is being replaced because

_____.

I certify that the responses herein are, to the best of my knowledge, accurate:

_____ _____

Applicant's Signature and Printed Name Date

_____ _____

Agent's Signature and Printed Name Date

I do not want this notice read aloud to me. ____ (Applicants must initial only if they do not want the notice read aloud.)

A replacement may not be in your best interest, or your decision could be a good one. You should make a careful comparison of the costs and benefits of your existing policy or contract and the proposed policy or contract. One way to do this is to ask the company or agent that sold you your existing policy or contract to provide you with information concerning your existing policy or contract. This may include an illustration of how your existing policy or contract is working now and how it would perform in the future based on certain assumptions. Illustrations should not, however, be used as a sole basis to compare policies or contracts. You should discuss the following with your agent to determine whether replacement or financing your purchase makes sense:

PREMIUMS: Are they affordable?
Could they change?
You're older—are premiums higher for the proposed new policy?
How long will you have to pay premiums on the new policy? On the old policy?

POLICY VALUES: New policies usually take longer to build cash values and to pay dividends.

Acquisition costs for the old policy may have been paid, you will incur costs for the new one.
What surrender charges do the policies have?
What expense and sales charges will you pay on the new policy?
Does the new policy provide more insurance coverage?

INSURABILITY: If your health has changed since you bought your old policy, the new one could cost you more, or you could be turned down.
You may need a medical exam for a new policy.
Claims on most new policies for up to the first two years can be denied based on inaccurate statements.
Suicide limitations may begin anew on the new coverage.

IF YOU ARE KEEPING THE OLD POLICY AS WELL AS THE NEW POLICY:

How are premiums for both policies being paid?
How will the premiums on your existing policy be affected?
Will a loan be deducted from death benefits?
What values from the old policy are being used to pay premiums?

IF YOU ARE SURRENDERING AN ANNUITY OR INTEREST SENSITIVE LIFE PRODUCT:

Will you pay surrender charges on your old contract?
What are the interest rate guarantees for the new contract?
Have you compared the contract charges or other policy expenses?

OTHER ISSUES TO CONSIDER FOR ALL TRANSACTIONS:

What are the tax consequences of buying the new policy?
Is this a tax free exchange? (See your tax advisor.)
Is there a benefit from favorable "grandfathered" treatment of the old policy under the federal tax code?
Will the existing insurer be willing to modify the old policy?
How does the quality and financial stability of the new company compare with your existing company?

Figure: 28 TAC §3.9505(a)(1)

IMPORTANT NOTICE:
REPLACEMENT OF LIFE INSURANCE OR ANNUITIES

You are contemplating the purchase of a life insurance policy or annuity contract. In some cases this purchase may involve discontinuing or changing an existing policy or contract. If so, a replacement is occurring. Financed purchases are also considered replacements.

A replacement occurs when a new policy or contract is purchased and, in connection with the sale, you discontinue making premium payments on the existing policy or contract, or an existing policy or contract is surrendered, forfeited, assigned to the replacing insurer, or otherwise terminated or used in a financed purchase.

A financed purchase occurs when the purchase of a new life insurance policy involves the use of funds obtained by the withdrawal or surrender of or by borrowing some or all of the policy values, including accumulated dividends, of an existing policy, to pay all or part of any premium or payment due on the new policy. A financed purchase is a replacement.

You should carefully consider whether a replacement is in your best interests. You will pay acquisition costs and there may be surrender costs deducted from your policy or contract. You may be able to make changes to your existing policy or contract to meet your insurance needs at less cost. A financed purchase will reduce the value of your existing policy and may reduce the amount paid upon the death of the insured.

We want you to understand the effects of replacements and ask that you answer the following questions and consider the questions on the back of this form.

1. Are you considering discontinuing making premium payments, surrendering, forfeiting, assigning to the insurer, or otherwise terminating your existing policy or contract? ___ YES ___ NO

2. Are you considering using funds from your existing policies or contracts to pay premiums due on the new policy or contract? ___ YES ___ NO

Please list each existing policy or contract you are contemplating replacing (include the name of the insurer, the insured, and the policy or contract number if available) and whether each policy or contract will be replaced or used as a source of financing:

	INSURER NAME	CONTRACT OR POLICY #	INSURED OR ANNUITANT	REPLACED (R) OR FINANCING (F)
1.				
2.				
3.				

Make sure you know the facts. Contact your existing company or its agent for information about the old policy or contract. If you request one, an in force illustration, policy summary or available disclosure documents must be sent to you by the existing insurer. Ask for and retain all sales material used by the agent in the sales presentation. Be sure that you are making an informed decision.

I certify that the responses herein are, to the best of my knowledge, accurate:

_____

Applicant's Signature and Printed Name Date

A replacement may not be in your best interest, or your decision could be a good one. You should make a careful comparison of the costs and benefits of your existing policy or contract and the proposed policy or contract. One way to do this is to ask the company or agent that sold you your existing policy or contract to provide you with information concerning your existing policy or contract. This may include an illustration of how your existing policy or contract is working now and how it would perform in the future based on certain assumptions. Illustrations should not, however, be used as a sole basis to compare policies or contracts. You should discuss the following with your agent to determine whether replacement or financing your purchase makes sense:

PREMIUMS:
Are they affordable?
Could they change?
You're older—are premiums higher for the proposed new policy?
How long will you have to pay premiums on the new policy? On the old policy?

POLICY VALUES:
New policies usually take longer to build cash values and to pay dividends.
Acquisition costs for the old policy may have been paid, you will incur costs for the new one.
What surrender charges do the policies have?
What expense and sales charges will you pay on the new policy?
Does the new policy provide more insurance coverage?

INSURABILITY:
If your health has changed since you bought your old policy, the new one could cost you more, or you could be turned down.
You may need a medical exam for a new policy.
Claims on most new policies for up to the first two years can be denied based on inaccurate statements.
Suicide limitations may begin anew on the new coverage.

IF YOU ARE KEEPING THE OLD POLICY AS WELL AS THE NEW POLICY:

How are premiums for both policies being paid?

How will the premiums on your existing policy be affected?
Will a loan be deducted from death benefits?
What values from the old policy are being used to pay premiums?

IF YOU ARE SURRENDERING AN ANNUITY OR INTEREST SENSITIVE LIFE PRODUCT:

Will you pay surrender charges on your old contract?
What are the interest rate guarantees for the new contract?
Have you compared the contract charges or other policy expenses?

OTHER ISSUES TO CONSIDER FOR ALL TRANSACTIONS:

What are the tax consequences of buying the new policy?
Is this a tax free exchange? (See your tax advisor.)
Is there a benefit from favorable "grandfathered" treatment of the old policy under the federal tax code?
Will the existing insurer be willing to modify the old policy?
How does the quality and financial stability of the new company compare with your existing company?

Figure: 28 TAC §3.9505(a)(2)

NOTICE REGARDING REPLACEMENT
REPLACING YOUR LIFE INSURANCE POLICY OR ANNUITY?

Are you thinking about buying a new life insurance policy or annuity and discontinuing or changing an existing one? If you are, your decision could be a good one—or a mistake. You will not know for sure unless you make a careful comparison of your existing benefits and the proposed policy or contract's benefits.

Make sure you understand the facts. You should ask the company or agent that sold you your existing policy or contract to give you information about it.

Hear both sides before you decide. This way you can be sure you are making a decision that is in your best interest.

Figure: 28 TAC §3.9506(b)

TEXAS DEPARTMENT OF INSURANCE CONSUMER ADVISORY

This transaction may have very serious financial consequences for you. Life insurance policies and annuity contracts provide many consumers with needed financial security. However, please be advised that you may be unable to access your funds in a new policy or contract for many years without incurring charges or penalties. There may be additional tax liabilities if you use funds from an existing policy or contract. Consider consulting a tax advisor. Changing your current policies or contracts may result in additional costs, and you may also lose benefits and coverage. Carefully read all documents provided to you during the sale and when your policy or contract is delivered.

IN ADDITION

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings issued by the Office of Consumer Credit Commissioner, and consultant proposal requests and awards. State agencies also may publish other notices of general interest as space permits.

Office of the Attorney General

Texas Clean Air Act and Texas Solid Waste Disposal Act Settlement Notice

Notice is hereby given by the State of Texas of the following proposed resolution of an environmental enforcement lawsuit under the Texas Clean Air Act and Texas Solid Waste Disposal Act. Before the State may settle a judicial enforcement action the State shall permit the public to comment in writing on the proposed judgment. The Attorney General will consider any written comments and may withdraw or withhold consent to the proposed agreed judgment if the comments disclose facts or considerations that indicate that the consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Acts.

Case Title and Court: Harris County and State of Texas v. Aldo Rea, Cause No. 2007-02684 in the 334th District Court of Harris County, Texas.

Nature of Defendant's Operations: Defendant Aldo Rea purchased property in Harris County in 2006. When he purchased the property it was covered with wood waste and other construction and land clearing debris. Mr. Rea agreed to a temporary injunction and has cleaned up the site and disposed of all waste at permitted facilities.

Proposed Agreed Judgment: The judgment provides for Mr. Rea to pay civil penalties of $13,125.00 and to pay $1,000.00 in attorney's fees. The civil penalties and attorney's fees are to be divided evenly between Harris County and the State.

For a complete description of the proposed settlement, the complete proposed Agreed Final Judgment should be reviewed. Requests for copies of the proposed judgment, and written comments on the proposed settlement should be directed to Liz Bills, Assistant Attorney General Office of the Texas Attorney General, P.O. Box 12548, Austin, Texas 78711-2548, (512) 463-2012, facsimile (512) 320-0911. Written comments must be received within 30 days of publication of this notice to be considered.

TRD-200704857
Stacey Napier
Deputy Attorney General
Office of the Attorney General
Filed: October 11, 2007

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Coastal Coordination Council

Notice and Opportunity to Comment on Requests for Consistency Agreement/Concurrence Under the Texas Coastal Management Program

On January 10, 1997, the State of Texas received federal approval of the Coastal Management Program (CMP) (62 Federal Register pp. 1439-1440). Under federal law, federal agency activities and actions affecting the Texas coastal zone must be consistent with the CMP goals and policies identified in 31 TAC Chapter 501. Requests for federal consistency review were deemed administratively complete for the following project(s) during the period of October 5, 2007, through October 11, 2007. As required by federal law, the public is given an opportunity to comment on the consistency of proposed activities in the coastal zone undertaken or authorized by federal agencies. Pursuant to 31 TAC §§506.25, 506.32, and 506.41, the public comment period for this activity extends 30 days from the date published on the Coastal Coordination Council web site. The notice was published on the web site on October 17, 2007. The public comment period for this project will close at 5:00 p.m. on November 16, 2007.

FEDERAL AGENCY ACTIONS:

Applicant: TOTAL Petrochemicals USA, Inc.; Location: The project site is located in wetlands adjacent to the Neches River, and in the river itself, on a large parcel of undeveloped land owned by the applicant, located north of Highway 87, in Port Arthur, Jefferson County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: Port Arthur, Texas. Approximate UTM Coordinates in NAD 27 (meters): Zone 15; Easting: 415032; Northing: 3314265. Project Description: The applicant is requesting authorization to construct a new Deep Conversion Project at their existing refinery facility located in Jefferson County, Texas. Specifically, the applicant proposes to construct two haul roads, a new docking facility and berthing area, a flare, and a sulfur recovery complex. Haul Road Number 1 will provide access to Highway 87 and would necessitate the discharge of fill material into 3.10 acres of wetlands. Approximately 74,000 cubic yards of fill material would be discharged into wetlands to construct Haul Road Number 1.

Haul Road Number 2 would connect the proposed dock and berthing area to an existing hurricane protection levee that runs along the southwestern portion of the project site. Approximately 275,000 cubic yards of fill material would be discharged into 6.18 acres of waters of the United States, including wetlands, to construct the second haul road and the berthing area. Both access roads are necessary to facilitate construction activities associated with the construction of the Deep Conversion Project. Additional impacts to wetlands are associated with the construction of a flare (5.96 acres) and a sulfur recovery complex (4.19 acres).

At the dock facility, the applicant proposes to construct a crane slab, a construction dock, an onshore mooring dolphin, monopiles, and a new bulkhead. In addition, the applicant would dredge the ship berth to -15 feet mean low tide. Approximately 27,000 cubic yards of material would be excavated from this area and placed in Dredged Material Placement Area No. 14. A majority of the work associated with the docking facility would be conducted above the ordinary high water mark of the Neches River.

Overall, the proposed project would result in temporary impacts to 8.65 acres of wetlands and permanent impacts to 19.42 acres of primarily emergent wetlands. Dominant wetland vegetation on the tract consists of Phragmites (*Phragmites australis*), Spartina (*Spartina alterniflora*), California bulrush (*Scirpus californicus*), Sea-ox-eye daisy (*Borricharis halimifolia*) and salt cedar (*Tamarix gallica*). To compensate for impacts to the aquatic habitat, the applicant is proposing to purchase credits from the Neches River Cypress Swamp Preserve at a 3:1 ratio.

CCC Project No.: 07-0305-F1; Type of Application: U.S.A.C.E. permit application #SWG-2007-83 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and §404 of the Clean Water Act (33 U.S.C.A. §1344). Note: The consistency review for this project may be conducted by the Texas Commission on Environmental Quality under §401 of the Clean Water Act (33 U.S.C.A. §1344).

Applicant: David Guerrero; Location: The site is between Laguna Shores Road and the Laguna Madre, approximately 200 feet south of the terminus of Glenoak Drive, on Lot A in Tract 14 and a portion of Lot B in Tract 15, Laguna Madre Acres, Flour Bluff, in Corpus Christi, Nueces County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: Oso Creek NE, Texas. Approximate UTM Coordinates in NAD 27 (meters): Zone 14; Easting: 668953; Northing: 3057795. Project Description: The U.S. Army Corps of Engineers (Corps) is evaluating an after-the-fact permit application for work that was performed without Department of the Army authorization. The project consists of the placement of approximately 360 cubic yards of fill material (sandy loam) in waters of the United States, specifically the wetlands adjacent to the Laguna Madre. The area filled was approximately 80 feet wide and 88 feet long (0.15 acres). The fill material was placed on the site on approximately June 17, 2004, and has remained in place since that time. The impacted area can be characterized as saltwater coastal flat, containing a mixture of unvegetated sand flat and sparse vegetation such as *Batis maratima* (Saltwort) and *Salicornia virginica* (Glasswort). CCC Project No.: 08-0005-F1; Type of Application: U.S.A.C.E. permit application #24136 is being evaluated under §404 of the Clean Water Act (33 U.S.C.A. §1344). Note: The consistency review for this project may be conducted by the Texas Commission on Environmental Quality under §401 of the Clean Water Act (33 U.S.C.A. §1344).

Applicant: Joseph Kenney; Location: The project site is located on the Resaca de la Guerra at 3154 Central Boulevard, approximately 800 feet south of FM 802, in Brownsville, Cameron County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: West Brownsville, Texas. Approximate UTM Coordinates in NAD 83 (meters): Zone 14; Easting: 649550; Northing: 2870600. Project Description: The applicant proposes to construct a bulkhead and place fill material behind it in order to reclaim eroded land and expand a restaurant parking lot. The applicant proposes to construct 272 linear feet of bulkhead and place approximately 505 cubic yards of clean fill material behind it so that it would occupy approximately 4,360 square feet (0.10 acre). The bulkhead would be constructed an average of approximately 25 feet from the existing water's edge. CCC Project No.: 08-0006-F1; Type of Application: U.S.A.C.E. permit application #SWG-2007-633 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and §404 of the Clean Water Act (33 U.S.C.A. §1344). Note: The consistency review for this project may be conducted by the Texas Commission on Environmental Quality under §401 of the Clean Water Act (33 U.S.C.A. §1344).

Applicant: Bolivar Holdings, LLC; Location: The project is located in southeast of the State Highway 87 and Retillion Road intersection, oceanside of the existing Audubon Society preserve, on Bolivar Peninsula, Galveston County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: Flake, Texas. Approximate UTM Coordinates in NAD 27 (meters): Zone 15; Easting: 332625; Northing: 3251870 Project Description: The applicant proposes to fill 6.02 acres of dune swale wetlands to construct a master-planned beachfront community. In the process of development planning, the applicant has stated that they will avoid and preserve 5.59 acres of dune swale wetlands within the project site. In addition to on-site avoidance, the applicant is proposing off-site compensatory mitigation. The off-site compensatory mitigation site is located northeast of the State Highway 87 and Retillion Road intersection. Based on the results of a Tidal Fringe Interim Hydrogeomorphic Analysis, the applicant is proposing to offset unavoidable impacts to waters of the United States (wetlands) by preserving 6.25 acres of dune swale wetlands and creating an additional 5.85 acres of dune swale wetlands. These created areas will be contiguous with the existing wetland areas. CCC Project No.: 08-0007-F1; Type of Application: U.S.A.C.E. permit application #SWG-2007-321 is being evaluated under §404 of the Clean Water Act (33 U.S.C.A. §1344). Note: The consistency review for this project may be conducted by the Texas Commission on Environmental Quality under §401 of the Clean Water Act (33 U.S.C.A. §1344).

Applicant: KM Liquids Terminals, LP; Location: The project site is located on the north bank of the Houston Ship Channel, approximately 2,500 feet upstream from the Washburn Tunnel, in Galena Park, Harris County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: Pasadena, Texas. Approximate UTM Coordinates in NAD 27 (meters): Zone 15; Easting: 285205; Northing: 3290264. Project Description: The applicant is requesting authorization to construct a new ship dock (Ship Dock 4) at the existing KM Liquids Terminals, L.P. Galena Park Storage Facility. The additional dock is necessary to allow for the safe loading and unloading of ships servicing the terminals. Construction of the 850-foot-long dock would necessitate the hydraulic excavation of approximately 100,000 cubic yards of sand and 180,000 cubic yards of clay. An additional 150,000 cubic yards of material would be mechanically excavated from the site. The dock will be excavated to a depth of -42 feet mean low tide. All material removed from the site will be deposited on KM Liquids Terminals' property. The applicant will also install shoreline protection along the new dock. Approximately 250 cubic yards of riprap and 207 cubic yards of interlocking concrete blocks would be placed below the mean high tide line of the Houston Ship Channel. No wetlands or vegetated shallows will be impacted as a result of the proposed activity. CCC Project No.: 08-0008-F1; Type of Application: U.S.A.C.E. permit application #SWG-2007-616 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and §404 of the Clean Water Act (33 U.S.C.A. §1344).

Applicant: Red Willow Offshore, LLC; Location: The project is located in Galveston Bay, State Tract (ST) 261, approximately 6.4 miles east of Kemah, and near the confluence of the Clear Creek Channel and the Houston Ship Channel, in Chambers County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: Bacliff, Texas. Approximate UTM Coordinates in NAD 27 (meters) for the well: Zone 15; Easting: 314214; Northing: 3269242. Approximate UTM Coordinates in NAD 27 (meters) for the pipeline tie-in: Zone 15; Easting: 314640; Northing: 3269628. Project Description: The applicant proposes to install, operate and maintain structures and equipment necessary for oil and gas drilling and production activities associated with Red Willow ST 261, Well No. 1. Such activities include installation of a typical marine barge and keyway, placement of approximately 2,667 cubic yards of crushed concrete or rock for a pad, and installation of production structures with attendant facilities, and flowlines. Should the well prove productive, a 1,885-foot-long pipeline is also proposed, to extend from the proposed well to an existing 8-inch pipeline. CCC Project No.: 08-0009-F1; Type of Application: U.S.A.C.E. permit application #SWG-2007-715 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and §404 of the Clean Water Act (33 U.S.C.A. §1344). Note: The consistency review for this project may be conducted by the Railroad Commission of Texas under §401 of the Clean Water Act (33 U.S.C.A. §1344).

Pursuant to §306(d)(14) of the Coastal Zone Management Act of 1972 (16 U.S.C.A. §§1451-1464), as amended, interested parties are invited to submit comments on whether a proposed action is or is not consistent with the Texas Coastal Management Program goals and policies

and whether the action should be referred to the Coastal Coordination Council for review.

Further information on the applications listed above may be obtained from Ms. Tammy Brooks, Consistency Review Coordinator, Coastal Coordination Council, P.O. Box 12873, Austin, Texas 78711-2873, or tammy.brooks@glo.state.tx.us. Comments should be sent to Ms. Brooks at the above address or by fax at (512) 475-0680.

TRD-200704904
Larry L. Laine
Chief Clerk/Deputy Land Commissioner, General Land Office
Coastal Coordination Council
Filed: October 16, 2007

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Comptroller of Public Accounts

Notice of Award

The Comptroller of Public Accounts, State Energy Conservation Office (SECO) announces this notice of award of a contract for energy education outreach services for the Schools and Local Government Program. The contract was awarded to University of Texas at El Paso, 500 W. University Avenue, El Paso, Texas 79968.

The notice of request for proposals (RFP #178g) was published in the July 27, 2007, issue of the *Texas Register* (32 TexReg 4643). The total amount of the contract is not to exceed $299,167.00. The term of the contract is October 8, 2007 through August 31, 2008.

TRD-200704939
Pamela Smith
Deputy General Counsel for Contracts
Comptroller of Public Accounts
Filed: October 17, 2007

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Notice of Request for Proposals

Pursuant to Chapter 2254, Subchapter B, and Sections 403.301 and 403.3011, Texas Government Code; Section 5.102, Property Tax Code; and Chapter 271, Local Government Code, the Comptroller of Public Accounts (Comptroller) announces the issuance of a Request for Proposals (RFP #182a) from qualified, independent firms to provide consulting services to Comptroller. The successful respondent(s) will assist Comptroller in conducting an Appraisal Standards Review (ASR) of the Harris County Appraisal District (HCAD), the second largest appraisal district in the United States (in appraised properties). Comptroller reserves the right to select multiple contractors to participate in conducting the review of HCAD, as set forth in the RFP. The successful respondent(s) will be expected to begin performance of the contract or contracts, if any, on or about December 14, 2007, or as soon thereafter as practical.

Contact: Parties interested in submitting a proposal should contact William Clay Harris, Assistant General Counsel, Contracts, Comptroller of Public Accounts, 111 E. 17th St., ROOM G-24, Austin, Texas, 78774 (Issuing Office), telephone number: (512) 305-8673, to obtain a copy of the RFP. Comptroller will mail copies of the RFP only to those specifically requesting a copy. The RFP was made available for pick-up at the above-referenced address on Friday, October 26, 2007, after 10 a.m., Central Zone Time (CZT), and during normal business hours thereafter. Comptroller also made the complete RFP available electronically on the Electronic State Business Daily at: http://esbd.cpa.state.tx.us after 10 a.m. (CZT) on Friday, October 26, 2007.

Non-Mandatory Letters of Intent and Questions: All Non-Mandatory Letters of Intent and questions regarding the RFP must be sent via facsimile to Mr. Harris at: (512) 463-3669, not later than 2:00 p.m. (CZT), on Friday, November 9, 2007. Official responses to questions received by the foregoing deadline will be posted electronically on the Electronic State Business Daily no later than Friday, November 16, 2007, or as soon thereafter as practical. Non-Mandatory Letters of Intent or Questions received after the deadline will not be considered. Respondents shall be solely responsible for confirming the timely receipt of Non-Mandatory Letters of Intent and Questions in the Issuing Office.

Closing Date: Proposals must be received in the Assistant General Counsel's Office at the address specified above (ROOM G-24) no later than 2 p.m. (CZT), on Friday, November 30, 2007. Proposals received after this time and date will not be considered. Proposals will not be accepted from respondents that do not submit proposals by the foregoing deadline. Respondents shall be solely responsible for confirming the timely receipt of proposals in the Issuing Office.

Evaluation and Award Procedure: All proposals will be subject to evaluation by a committee based on the evaluation criteria and procedures set forth in the RFP. Comptroller will make the final decision regarding the award of master contracts for assignments from the pool selected, if any. Comptroller reserves the right to award one or more contracts under this RFP. Comptroller reserves the right to accept or reject any or all proposals submitted. Comptroller is under no legal or other obligation to execute any contracts on the basis of this notice or the distribution of any RFP. Comptroller shall not pay for any costs incurred by any entity in responding to this Notice or the RFP.

The anticipated schedule of events is as follows: Issuance of RFP - October 26, 2007, after 10:00 a.m. CZT; Non-Mandatory Letters of Intent and Questions Due - November 9, 2007, 2 p.m. CZT; Official Responses to Questions Posted - November 16, 2007, or as soon thereafter as practical; Proposals Due - November 30, 2007, 2 p.m. CZT; Contract Execution - December 14, 2007, or as soon thereafter as practical; Commencement of Project Activities - December 14, 2007, or as soon thereafter as practical.

TRD-200704938
Pamela Smith
Deputy General Counsel for Contracts
Comptroller of Public Accounts
Filed: October 17, 2007

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Office of Consumer Credit Commissioner

Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in §§303.003, 303.009, and 304.003, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 10/22/07 - 10/28/07 is 18% for Consumer[1]/Agricultural/Commercial[2]/credit through $250,000.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 10/22/07 - 10/28/07 is 18% for Commercial over $250,000.

The judgment ceiling as prescribed by §304.003 for the period of 11/01/07 - 11/30/07 is 7.75% for Consumer/Agricultural/Commercial/credit through $250,000.

The judgment ceiling as prescribed by §304.003 for the period of 11/01/07 - 11/30/07 is 7.75% for Commercial over $250,000.

[1]Credit for personal, family or household use.

[2]Credit for business, commercial, investment or other similar purpose.

TRD-200704905
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: October 16, 2007

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Credit Union Department

Application for a Merger or Consolidation

Notice is given that the following application has been filed with the Credit Union Department and is under consideration:

An application was received from Government Service Credit Union (Port Arthur) seeking approval to merge with Port Arthur Community Federal Credit Union (Port Arthur), with the latter being the surviving credit union.

Comments or a request for a meeting by any interested party relating to an application must be submitted in writing within 30 days from the date of this publication. Any written comments must provide all information that the interested party wishes the Department to consider in evaluating the application. All information received will be weighed during consideration of the merits of an application. Comments or a request for a meeting should be addressed to the Texas Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699.

TRD-200704923
Harold E. Feeney
Commissioner
Credit Union Department
Filed: October 17, 2007

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Notice of Final Action Taken

In accordance with the provisions of 7 TAC §91.103, the Credit Union Department provides notice of the final action taken on the following applications:

Application for a Merger or Consolidation - Approved

Dallas Area Rapid Transit (DART) Federal Credit Union (Dallas) and City Credit Union (Dallas) - See *Texas Register* issue dated June 29, 2007.

Application for a Foreign Branch Office - Approved

TruWest Credit Union, Scottsdale, Arizona - See *Texas Register* issue dated August 31, 2007.

TRD-200704924
Harold E. Feeney
Commissioner
Credit Union Department
Filed: October 17, 2007

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Texas Commission on Environmental Quality

Notice of Correction--Settlement Agreement Order

The following item was incorrectly published by the Commission as a Default Order and should have been published as a Settlement Agreement Order.

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Order (AO) in accordance with Texas Water Code (TWC), §7.075. Section 7.075 requires that before the commission may approve the AO, the commission shall allow the public an opportunity to submit written comments on the proposed AO. Section 7.075 requires that notice of the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **November 26, 2007**. Section 7.075 also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commissions jurisdiction or the commissions orders and permits issued in accordance with the commissions regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of the proposed AO is available for public inspection at both the commissions central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the attorney designated for the AO at the commissions central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on November 26, 2007**. Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The designated attorney is available to discuss the AO and/or the comment procedure at the listed phone number; however, §7.075 provides that comments on an AO shall be submitted to the commission in **writing**.

(1) COMPANY: Jamie Garcia; DOCKET NUMBER: 2006-0077-MSW-E; TCEQ ID NUMBER: RN104799101; LOCATION: intersection of Highway 281 and County Road 285, Falfurrias, Brooks County and an unauthorized site located 3/4 mile west of County Road 206, on County Road 410, Jim Wells County, Texas; TYPE OF FACILITY: demolished building; RULES VIOLATED: 30 TAC §330.5(c), by causing suffering, allowing, or permitting the dumping or disposal of municipal solid waste, including demolition debris, at an unauthorized facility. Specifically, Mr. Garcia demolished a building and arranged for the transportation and disposal of the debris at an unauthorized facility; PENALTY: $3,000; STAFF ATTORNEY: Alfred Oloko, Litigation Division, MC R-12, (713) 422-8918; REGIONAL OFFICE: Corpus Christi Regional Office, 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

TRD-200704929
Mary R. Risner
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: October 17, 2007

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Notice of Opportunity to Comment on Default Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Default Orders (DOs). The commission staff proposes a DO when the staff has sent an executive director's preliminary report and petition (EDPRP) to an entity outlining the alleged violations; the proposed penalty; and the proposed technical requirements necessary to bring the entity back into compliance; and the entity fails to request a hearing on the matter within 20 days of its receipt of the EDPRP or

requests a hearing and fails to participate at the hearing. Similar to the procedure followed with respect to Agreed Orders entered into by the executive director of the commission, in accordance with Texas Water Code (TWC), §7.075 this notice of the proposed order and the opportunity to comment is published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **November 26, 2007**. The commission will consider any written comments received and the commission may withdraw or withhold approval of a DO if a comment discloses facts or considerations that indicate that consent to the proposed DO is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction, or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed DO is not required to be published if those changes are made in response to written comments.

A copy of each proposed DO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about the DO should be sent to the attorney designated for the DO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on November 26, 2007**. Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The commission's attorneys are available to discuss the DOs and/or the comment procedure at the listed phone numbers; however, §7.075 provides that comments on the DOs shall be submitted to the commission in **writing**.

(1) COMPANY: Adrian Lionel Villarreal; DOCKET NUMBER: 2007-0261-LII-E; TCEQ ID NUMBER: RN105120752; LOCATION: 11802 Seagrove Drive, Pearland, Harris County, Texas; TYPE OF FACILITY: landscape irrigation business; RULES VIOLATED: 30 TAC §344.4 and §30.5(b), Texas Occupations Code, §1903.251; and Texas Water Code (TWC), §37.003, by failing to hold an irrigator license prior to selling, designing, consulting, installing, maintaining, altering, repairing, or servicing an irrigation system; PENALTY: $625; STAFF ATTORNEY: Ben Thompson, Litigation Division, MC 175, (512) 239-1297; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023, (713) 767-3500.

(2) COMPANY: Carol D. Shumaker dba Annex Cleaners 2; DOCKET NUMBER: 2006-1272-DCL-E; TCEQ ID NUMBER: RN102913936; LOCATION: 1620 Martin Luther King Jr. Boulevard, Dallas, Dallas County, Texas; TYPE OF FACILITY: dry cleaning drop station; RULES VIOLATED: 30 TAC §337.10(a) and Texas Health and Safety Code (THSC), §374.102, by failing to complete and submit the required registration form to TCEQ for a dry cleaning and/or drop station facility; PENALTY: $1,185; STAFF ATTORNEY: Jacquelyn Boutwell, Litigation Division, MC 175, (512) 239-5846; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(3) COMPANY: Cowboy Foundations and Construction, Inc.; DOCKET NUMBER: 2005-0050-WQ-E; TCEQ ID NUMBER: RN104332945; LOCATION: 19485 Marbach Lane, Bracken, Comal County, Texas; TYPE OF FACILITY: sand and gravel quarry; RULES VIOLATED: 30 TAC §281.25(a)(4) and 40 Code of Federal Regulations (CFR) §122.26(a), by operating a quarry without authorization to discharge storm water; PENALTY: $10,500; STAFF ATTORNEY: Ben Thompson, Litigation Division, MC 175, (512) 239-1297; REGIONAL OFFICE: San Antonio Regional Office, 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(4) COMPANY: Dale Craghead dba Col-Tex Stations; DOCKET NUMBER: 2007-0173-PST-E; TCEQ ID NUMBER: RN101813715; LOCATION: 502 East 2nd Street, Colorado City, Mitchell County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.47(a)(2), by failing to permanently remove from service, no later than 60 days after the statutorily prescribed upgrade implementation date, five underground storage tanks (USTs) for which at least one applicable component was not brought into timely compliance with the upgrade requirements; and 30 TAC §334.22(a) and TWC, §5.702, by failing to pay outstanding UST fees and associated penalties and interest for TCEQ Financial Account No. 0051026U for Fiscal Years 1999 through 2007; PENALTY: $13,125; STAFF ATTORNEY: Lena Roberts, Litigation Division, MC 175, (512) 239-0019; REGIONAL OFFICE: Abilene Regional Office, 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(5) COMPANY: Felipe Posada dba Key Road Subdivision Water Supply; DOCKET NUMBER: 2006-1689-PWS-E; TCEQ ID NUMBER: RN104814447; LOCATION 4091 Key Road, Bloomington, Victoria County, Texas; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.109(c)(2)(A)(i) and §290.122(c)(2)(A) and THSC, §341.033(d), by failing to conduct routine bacteriological monitoring of the public water supply and by failing to provide public notification of the failure to perform routine bacteriological monitoring of the public water supply during the months of January - September 2006; 30 TAC §290.46(e) and THSC, §341.033(a), by failing to ensure that the public water supply operation is under the direct supervision of a water works operator who holds a Class D or higher license; 30 TAC §290.46(f), by failing to maintain a record of water works operation and maintenance activities; 30 TAC §290.121(a), by failing to maintain an up-to-date chemical and microbiological monitoring plan; and 30 TAC §290.110(c)(5)(A), by failing to monitor free chlorine disinfectant residual at representative locations in the distribution system at least once every seven days; PENALTY: $3,098; STAFF ATTORNEY: Tracy Chandler, Litigation Division, MC 175, (512) 239-0629; REGIONAL OFFICE: Corpus Christi Regional Office, 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

(6) COMPANY: James M. Knowles; DOCKET NUMBER: 2006-0150-MSW-E; TCEQ ID NUMBER: RN102830742; LOCATION: 26823 Farm-to-Market Road 2978, Magnolia, Montgomery County, Texas; TYPE OF FACILITY: management and/or disposal of municipal solid waste; RULES VIOLATED: 30 TAC §330.5(c), by failing to prevent the unauthorized collection, storage, and/or disposal of municipal solid waste; PENALTY: $1,050; STAFF ATTORNEY: Jacquelyn Boutwell, Litigation Division, MC 175, (512) 239-5846; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023, (713) 767-3500.

(7) COMPANY: Jesse J. Garcia dba Longhorn Sandblasting; DOCKET NUMBER: 2006-1807-MLM-E; TCEQ ID NUMBER: RN105020333; LOCATION: 3505 South Lamar Boulevard, Apartment Number 1096, Austin and 1706 East 6th Street, Austin, Travis County, Texas (Site No. 1); and 1107 West 22 1/2 Street, Austin, Travis County, Texas (Site No. 2); TYPE OF FACILITY: sandblasting business; RULES VIOLATED: 30 TAC §335.2(a) and §335.4(3), by failing to prevent the unauthorized disposal of municipal hazardous waste so as to cause the endangerment of the public health and welfare; 30 TAC §101.4 and THSC, §382.085(a) and (b), by failing to control the discharge of an air contaminant in such concentration and duration as to adversely affect human health or welfare, animal life, vegetation, or property, or as to interfere with the normal use and enjoyment of animal life, vegetation, or property; and 30 TAC §335.2(a) and §335.4(3), by failing to prevent the unauthorized disposal of municipal hazardous waste so as to cause the endangerment of the public health and welfare; PENALTY: $12,500; STAFF ATTORNEY: Kathleen Decker, Litigation Division, MC 175, (512) 239-6500; REGIONAL

OFFICE: Austin Regional Office, 1921 Cedar Bend Drive, Suite 150, Austin, Texas 78758-5336, (512) 339-2929.

(8) COMPANY: Joey Sisca; DOCKET NUMBER: 2005-1114-LII-E; TCEQ ID NUMBER: RN104574389; LOCATION: 3306 Parliament Cove and 21106 Ridgeview Road, Lago Vista, Travis County, Texas; TYPE OF FACILITY: landscape irrigation system; RULES VIOLATED: 30 TAC §344.4(a) and §30.5(a), TWC, §37.003, and Texas Occupations Code, §1903.251, by failing to hold an irrigators license prior to selling, designing, consulting, installing, maintaining, altering, repairing, or servicing an irrigation system, including the connection of such system to any water supply; 30 TAC §30.5(b), by failing to possess an irrigator license before advertising or representing to the public that he could perform services for which a license was required without holding such a license or employing an individual who held a current license; and 30 TAC §344.58(b) and §30.5(b), by failing as an individual to refrain from using or attempting to use the license of someone else who is a licensed irrigator or licensed installer and to possess an irrigator license before advertising or representing to the public that an individual can perform services for which a license is required unless the individual holds a license or employs an individual who holds a current license; PENALTY: $4,000; STAFF ATTORNEY: Jacquelyn Boutwell, Litigation Division, MC 175, (512) 239-5846; REGIONAL OFFICE: Austin Regional Office, 1921 Cedar Bend Drive, Suite 150, Austin, Texas 78758-5336, (512) 339-2929.

(9) COMPANY: Jose J. Espinoza; DOCKET NUMBER: 2007-0112-EAQ-E; TCEQ ID NUMBER: RN105086110; LOCATION: approximately 200.87 acres located at 3601 County Road 239, Georgetown, Williamson County, Texas; TYPE OF FACILITY: limestone quarry; RULES VIOLATED: 30 TAC §213.4(a)(1), by failing to submit an Edwards Aquifer Protection Plan for commission approval prior to conducting quarry activities in the Edwards Aquifer Recharge Zone; PENALTY: $14,300; STAFF ATTORNEY: Lena Roberts, Litigation Division, MC 175, (512) 239-0019; REGIONAL OFFICE: Austin Regional Office, 1921 Cedar Bend Drive, Suite 150, Austin, Texas 78758-5336, (512) 339-2929.

(10) COMPANY: Mark McKillip; DOCKET NUMBER: 2004-0443-IHW-E; TCEQ ID NUMBER: RN103780896; LOCATION: approximately 620 feet northeast of State Highway 16 on County Road 450, DeLeon, Comanche County, Texas; TYPE OF FACILITY: abandoned residence and some outbuildings; RULES VIOLATED: 30 TAC §327.3(b), by failing to notify the TCEQ within 24 hours of a reportable discharge; and 30 TAC §327.5(a) and TWC, §26.121(a)(3), by failing to take action to abate and contain the spill or discharge documented during the investigation; PENALTY: $3,500; STAFF ATTORNEY: James Sallans, Litigation Division, MC 175, (512) 239-2053; REGIONAL OFFICE: Abilene Regional Office, 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(11) COMPANY: O'Boy Service Company, Inc.; DOCKET NUMBER: 2006-1942-SLG-E; TCEQ ID NUMBER: RN103017661; LOCATION: 4320 Trade Center Boulevard, Laredo, Webb County, Texas; TYPE OF FACILITY: sludge transportation operation; RULES VIOLATED: 30 TAC §312.147(b) by failing to obtain approval from the executive director to temporarily store waste at a fixed or permanent site; 30 TAC §312.143, by failing to deposit wastes at a facility designated or acceptable to the generator where the owner or operator of the facility designated by or acceptable to the generator agrees to receive the waste and the (Texas) facility has written authorization by permit or registration issued by the executive director to receive wastes; 30 TAC §312.144(a), by failing to prominently mark the company name and company telephone number on two vehicles and apply registration stickers on four vehicles; 30 TAC §312.44(a), by failing to maintain the registration number on both sides of the vehicles with numbers at least two inches in height on two vehicles; 30 TAC §312.144(f), by failing to prominently mark discharge valves on one vehicle; 30 TAC §312.144(b), by failing to maintain vehicles and equipment used for the collection and transportation of the wastes to prevent loss of liquid or solid waste materials and to prevent health nuisance and safety hazards to operating personnel and the public; 30 TAC §312.145(b)(2), by failing to retain copies of trip tickets for five years and be readily available for review by commission staff or be submitted to the executive director upon request; 30 TAC §312.145(b)(4), by failing to submit to the executive director by July 1, 2006, an annual summary of their activities for the previous period of June 1, 2005 - May 31, 2006, showing the amounts and types of waste collected, disposition of such wastes, and amounts and types of waste delivered to each facility; 30 TAC §312.147(a), by failing to prevent the storage of waste in a mobile closed container (container on wheels) for more than four days; TWC §26.121(a) by failing to prevent unauthorized discharges of waste into or adjacent to any water in the state; and 30 TAC §312.9 and TWC, §5.702, by failing to pay fees associated with Municipal Sludge for TCEQ Municipal Transportation Sludge Fee Account No. 0800227H, including associated late fees; PENALTY: $8,925; STAFF ATTORNEY: Barham A. Richard, Litigation Division, MC 175, (512) 239-0107; REGIONAL OFFICE: Laredo Regional Office, 707 East Calton Road, Suite 304, Laredo, Texas 78041-3887, (956) 791-6611.

(12) COMPANY: Tootsie S. Farris dba E & A Energy; DOCKET NUMBER: 2006-1683-PST-E; TCEQ ID NUMBER: RN101655074; LOCATION: 1133 North Knox, Fort Hancock, Hudspeth County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.7(d)(3) and §334.127(a)(1), by failing to register all petroleum USTs and amend the registration to show changes in the operational status of any tank system; 30 TAC §334.50(a)(1)(A) and TWC, §26.3475(c)(1), by failing to provide a release detection method capable of detecting a release from any portion of the UST system which contained regulated substances including the tanks, piping, and other underground ancillary equipment; 30 TAC §334.49(c)(4)(C) and TWC, §26.3475(d), by failing to inspect and test the cathodic protection system at least once every three years; 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by the accidental releases from the operation of petroleum USTs; and 30 TAC §334.22(a) and TWC, §5.702, by failing to pay UST fees and associated late fees to TCEQ Account No. 0059703U; PENALTY: $9,200; STAFF ATTORNEY: Mary Hammer, Litigation Division, MC 175, (512) 239-2496; REGIONAL OFFICE: El Paso Regional Office, 401 East Franklin Avenue, Suite 560, El Paso, Texas 79901-1212, (915) 834-4949.

TRD-200704931
Mary R. Risner
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: October 17, 2007

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Notice of Opportunity to Comment on Settlement Agreements of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (TWC), §7.075. Section 7.075 requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. Section 7.075 requires that notice of the opportunity to comment must be published in

the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **November 26, 2007**. Section 7.075 also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the attorney designated for the AO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on November 26, 2007**. Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The designated attorney is available to discuss the AO and/or the comment procedure at the listed phone number; however, §7.075 provides that comments on an AO shall be submitted to the commission in **writing**.

(1) COMPANY: Del Sol Development, Inc.; DOCKET NUMBER: 2006-1745-WQ-E; TCEQ ID NUMBER: RN104959143; LOCATION: southeast corner of the intersection of North Clark Road and West Camp Wisdom, Duncanville, Dallas County, Texas; TYPE OF FACILITY: commercial development site; RULES VIOLATED: 30 TAC §281.25(a)(4) and 40 Code of Federal Regulations (CFR) §122.26(c), by failing to obtain authorization to discharge storm water associated with construction activities to waters in the state; PENALTY: $2,100; STAFF ATTORNEY: Tracy Chandler, Litigation Division, MC 175, (512) 239-0629; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(2) COMPANY Enbridge Pipelines East Texas L.P.; DOCKET NUMBER: 2006-0527-AIR-E; TCEQ ID NUMBER: RN100224914; LOCATION: 2.7 miles south of Lanely on Highway 489, Freestone County, Texas; TYPE OF FACILITY: natural gas treating facility; RULES VIOLATED: 30 TAC §116.115(c); new source review (NSR) Air Permit No. 31352, Special Condition Nos. 1 and 8 and Texas Health and Safety Code (THSC), §382.085(b), by failing to comply with permitted Maximum Allowable Emission Rates of 42.01 pounds per hour for sulfur dioxide and by failing to meet their 96% sulfur recovery efficiency; 30 TAC §116.115(c); NSR Air Permit No. 31352, Special Condition No. 1 and THSC, §382.085(b), by failing to comply with permitted Maximum Allowable Emission Rates of 42.01 pounds for sulfur dioxide on 101 days between December 2, 2005 and April 4, 2006; PENALTY: $10,650; STAFF ATTORNEY: Kathleen Decker, Litigation Division, MC 175, (512) 239-6500; REGIONAL OFFICE: Waco Regional Office, 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(3) COMPANY: ExxonMobil Oil Corporation dba Mobil Chemical Beaumont Chemical Plant; DOCKET NUMBER: 2003-1455-AIR-E; TCEQ ID NUMBER: RN100542844; LOCATION: 2775 Gulf States Road, Beaumont, Jefferson County, Texas; TYPE OF FACILITY: petrochemical manufacturing plant; RULES VIOLATED: 30 TAC §§101.20(3), 116.115(b)(2)(G), and 116.115(c); Permit No. 7799/PSD-TX-860, Special Condition (SC) 1; and THSC, §382.085(b), by failing to prevent the unauthorized emission of air contaminants; 30 TAC §§101.20(3), 116.115(b)(2)(G) and 116.115(c); Permit No. 7799/PSD-TX-860, SC 1; and THSC, §382.085(b), by failing to prevent the unauthorized emission of air contaminants; 30 TAC §101.201(b)(8) and THSC, §382.085(b), by failing to properly notify the regional office of the TCEQ of an emissions event which began on November 1, 2002 at 9:41 a.m. and ended at 11:30 a.m.; and 30 TAC §§101.20(3),116.115(b)(2)(G), and 116.115(c); Permit No. 7799/PSD-TX-860, SC 1; and THSC, §382.085(b), by failing to prevent the unauthorized emission of an air contaminant; PENALTY: $23,938; STAFF ATTORNEY: Alfred Oloko, Litigation Division, MC R-12, (713) 422-8918; REGIONAL OFFICE: Beaumont Regional Office, 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(4) COMPANY: James Carnes; DOCKET NUMBER: 2007-0570-PST-E; TCEQ ID NUMBER: RN105111470; LOCATION: 1017 FM 2801, Huntington, Angelina County, Texas; TYPE OF FACILITY: property with one underground storage tank (UST); RULES VIOLATED: 30 TAC §334.47(a)(2), by failing to permanently remove from service, no later than 60 days after the prescribed upgrade implementation date, one UST for which any applicable component of the system is not brought into timely compliance with the upgrade requirements; and 30 TAC §334.47(a)(1), by failing to register all USTs in existence on or after September 1, 1987 with the TCEQ; PENALTY: $3,745; STAFF ATTORNEY: Kari Gilbreth, Litigation Division, MC 175, (512) 239-1320; REGIONAL OFFICE: Beaumont Regional Office, 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(5) COMPANY: The City of Galveston; DOCKET NUMBER: 2006-0019-MWD-E; TCEQ ID NUMBER: RN102342680; LOCATION: approximately 0.5 mile north of Stewart Road and 0.25 mile east of 12 Mile Road on Galveston Island, Galveston County, Texas; TYPE OF FACILITY: wastewater treatment facility; RULES VIOLATED: 30 TAC §§319.7(c), 319.1, and 305.125(1), and Texas Pollutant Discharge Elimination System (TPDES) Permit No. 11477-001, Special Provision No. 6, by failing to maintain records of irrigation practices used at the golf course located at 14228 Stewart Road, Galveston, Galveston County, Texas; PENALTY: $1,050; STAFF ATTORNEY: Mary E. Coleman, Litigation Division, MC R-4, (817) 588-5917; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023, (713) 767-3500.

TRD-200704930
Mary R. Risner
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: October 17, 2007

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Notice of Opportunity to Comment on Shut Down/Default Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (commission) staff is providing an opportunity for written public comment on the listed Shutdown/Default Orders (S/DOs). Texas Water Code (TWC), §26.3475 authorizes the commission to order the shutdown of any underground storage tank (UST) system found to be noncompliant with release detection, spill and overfill prevention, and/or, after December 22, 1998, cathodic protection regulations of the commission, until such time as the owner/operator brings the UST system into compliance with those regulations. The commission proposes a Shutdown Order after the owner or operator of a UST facility fails to perform required corrective actions within 30 days after receiving notice of the release detection, spill and overfill prevention, and/or, after December 22, 1998, cathodic protection violations documented at the facility. The commission proposes a Default Order when the staff has sent an

executive director's preliminary report and petition (EDPRP) to an entity outlining the alleged violations; the proposed penalty; and the proposed technical requirements necessary to bring the entity back into compliance; and the entity fails to request a hearing on the matter within 20 days of its receipt of the EDPRP or requests a hearing and fails to participate at the hearing. In accordance with TWC, §7.075, this notice of the proposed order and the opportunity to comment is published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **November 26, 2007**. The commission will consider any written comments received and the commission may withdraw or withhold approval of a S/DO if a comment discloses facts or considerations that indicate that consent to the proposed S/DO is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction, or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed S/DO is not required to be published if those changes are made in response to written comments.

Copies of each of the proposed S/DO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 2393400 and at the applicable regional office listed as follows. Written comments about the S/DO shall be sent to the attorney designated for the S/DO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on November 26, 2007**. Written comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The commission attorneys are available to discuss the S/DOs and/or the comment procedure at the listed phone numbers; however, comments on the S/DOs shall be submitted to the commission in **writing**.

(1) COMPANY: S.P. Holmes, Inc. dba Georgetown 66; DOCKET NUMBER: 2006-0866-PST-E; TCEQ ID NUMBER: RN102757481; LOCATION: 321 North IH-35, Georgetown, Williamson County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum underground storage tanks (USTs); 30 TAC §334.10(b), by failing to have required UST records maintained, readily accessible and available for inspection upon request by a representative of the TCEQ; 30 TAC §334.48(c), by failing to conduct effective manual or automatic inventory control procedures for all USTs involved in the retail sale of petroleum substances used as a motor fuel; and 30 TAC §334.50(a)(1)(A) and Texas Water Code, §26.3475(c)(1), by failing to have a method of release detection capable of detecting a release from any portion of the UST system at the facility; PENALTY: $ 9,375; STAFF ATTORNEY: Jacquelyn Boutwell, Litigation Division, MC 175, (512) 239-5846; REGIONAL OFFICE: Austin Regional Office, 1921 Cedar Bend Drive, Suite 150, Austin, Texas 78758-5336, (512) 339-2929.

TRD-200704932
Mary R. Risner
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: October 17, 2007

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Notice of Water Quality Applications

The following notices were issued during the period of October 4, 2007 through October 12, 2007.

The following require the applicants to publish notice in a newspaper. Public comments, requests for public meetings, or requests for a contested case hearing may be submitted to TCEQ, Office of the Chief Clerk, MC-105, P.O. Box 13087, Austin, Texas 78711-3087, WITHIN 30 DAYS OF THE DATE OF NEWSPAPER PUBLICATION OF THE NOTICE.

INFORMATION SECTION

BNSF RAILWAY COMPANY operates the Milby Street Yard which functions as a minor locomotive maintenance and washing facility, has applied for a renewal of TPDES Permit No. WQ0002039000, which authorizes the discharge of treated washwater and storm water at a daily average flow not to exceed 4,000 gallons per day via Outfall 001. The facility is located at the intersection of McKinney Avenue and Milby Street in the City of Houston, Harris County, Texas.

HARRIS COUNTY MUNICIPAL UTILITY DISTRICT NO. 371 has applied for a renewal of TPDES Permit No. WQ0014028001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 250,000 gallons per day. The facility is located on House Hahl Road, approximately 5,000 feet south-southwest of the intersection of House Hahl Road and U.S. Highway 290 in Harris County, Texas.

INLINE UTILITIES, LLC has applied for a renewal of TPDES Permit No. WQ0013942002, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 99,000 gallons per day. The facility will be located at 23822 State Highway 249, approximately 850 feet north of the intersection of State Highway 249 and Coons Road in Harris County, Texas.

JACKSON LEISURE PROPERTIES, L.P. has applied for a new permit, proposed Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0014821001, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 25,000 gallons per day. The facility was previously permitted under TPDES Permit No. WQ0014221001, which expired on September 1, 2006. The facility is located approximately 5 miles east-southeast of the intersection of U.S. Highway 287 and Farm-to-Market Road 637 in Eureka, Texas and approximately 5 miles west-northwest of the intersection of U.S. Highway 287 and Farm-to-Market Road 309 east of Richland-Chambers Reservoir in Navarro County, Texas.

LAND O'LAKES PURINA FEED LLC which operates an animal feed manufacturing facility, has applied for a major amendment to Permit No. WQ0002932000 to authorize an increase in the permitted irrigation area from 4.0 acres to 4.3 acres on property contiguous to the existing land application area. The current permit authorizes the disposal of wastewater from cleaning process equipment and process areas and storm water flows at an application rate not to exceed 0.51 acre-feet per year per acre irrigated via irrigation of 4.0 acres of Bermuda grass. This permit will not authorize a discharge of pollutants into water in the State. The facility and land application area are located at 825 (State) Highway 36 North, adjacent to State Highway 36, and approximately 1.5 miles west-northwest of the City of Rosenberg, Fort Bend County, Texas.

MAGNOLIA INDEPENDENT SCHOOL DISTRICT has applied for a renewal of TPDES Permit No. WQ0012703001 which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 48,000 gallons per day. The facility is located on the east side of Farm-to-Market Road 2987 at a point approximately 1.1 miles south of the intersection of Farm-to-Market Roads 1488 and 2978 in Montgomery County, Texas.

MAGNOLIA INDEPENDENT SCHOOL DISTRICT has applied for a renewal of TPDES Permit No. WQ0013653001 which authorizes the

discharge of treated domestic wastewater at a daily average flow not to exceed 15,000 gallons per day. The facility is located approximately 4.73 miles due south of the City of Magnolia central business district on the west side of Nichols Sawmill Road in Montgomery County, Texas.

SPRING CYPRESS WATER SUPPLY CORPORATION has applied for a renewal of TPDES Permit No. WQ0013711001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 35,000 gallons per day. The facility is located at 1442 Spring Cypress Road, approximately 600 feet northeast of the intersection of Interstate Highway 45 and Farm-to-Market Road 2920 (Spring Cypress Road) in Harris County, Texas.

SWS HOLDINGS - BRADY ISLAND LP which operates a construction and repair service for ships and barges, has applied for a renewal of TPDES Permit No. WQ0002034000, which authorizes the discharge of centralized waste treatment (CWT) wastewater and process wastewater at a daily average flow not to exceed 100,000 gallons per day via Outfall 001; the discharge of drydock wastewater and washdown water on an intermittent and flow variable basis via Outfalls 003, 004, and 005; and the discharge of ballast/void space water on an intermittent and flow variable basis via Outfall 006. The draft permit authorizes the discharge of drydock wastewater and washdown water on an intermittent and flow variable basis via Outfalls 003, 004, and 005; and the discharge of ballast/void space water on an intermittent and flow variable basis via Outfall 006. The facility is located at 8502 Cypress Street, on Brady Island between the Houston Ship Channel and Old Buffalo Bayou in the City of Houston, Harris County, Texas.

TURNER CREST VILLAGE WASTE WATER COMPANY, LLC has applied for a new permit, proposed Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0014831001, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 300,000 gallons per day. The facility is located approximately 3.77 miles northeast of the intersection of Highway 80 and Highway 142 and approximately 3,400 feet southeast of Highway 142 in Caldwell County, Texas.

WHITE OAK DEVELOPERS, INC. has applied for a renewal of TPDES Permit No. 14083-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 0.75 million gallons per day. The facility is located approximately 1,000 feet west of the confluence of Robinson Gully and White Oak Creek in Montgomery County, Texas.

WOODLAND OAKS UTILITY COMPANY, INC. has applied for a renewal of TPDES Permit No. WQ0014166001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 498,000 gallons per day. The facility is located at the upper reaches of Nickaburr Creek, approximately one-mile north of Farm-to-Market Road 1488 and 0.5 mile west of Old Egypt Road in Montgomery County, Texas.

The following do not require publication in a newspaper. Written comments or requests for a public meeting may be submitted to the Office of the Chief Clerk, at the address provided in the information section above, WITHIN 10 DAYS OF THE ISSUED DATE OF THE NOTICE.

The Texas Commission on Environmental Quality (TCEQ) has initiated a minor amendment of the Texas Pollutant Discharge Elimination System (TPDES) permit issued to THE CITY OF HOUSTON Public Utilities Department, P.O. Box 1562, Houston, Texas 77251-1562, to authorize the disposal of municipal water treatment plant sludge in a 22.98 acre water treatment plant sludge monofill. The facility is designed to handle approximately 100 cubic yards of water treatment plant sludge per day with the estimated life of the facility being 25 years. This permit will not authorize a discharge of pollutants into waters in the State. The facility is located at 3100 Genoa-Red Bluff Road in Harris County, Texas.

If you need more information about these permit applications or the permitting process, please call the TCEQ Office of Public Assistance, Toll Free, at 1-800-687-4040. General information about the TCEQ can be found at our web site at www.tceq.state.tx.us. Si desea información en Español, puede llamar al 1-800-687-4040.

TRD-200704933
LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: October 17, 2007

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Proposal for Decision

The State Office of Administrative Hearings issued a Proposal for Decision and Order to the Texas Commission on Environmental Quality on October 10, 2007, in the matter of the Executive Director of the Texas Commission on Environmental Quality, Petitioner v. Ammar Food, Inc., dba Sunrise Food Mart; SOAH Docket No. 582-06-2248; TCEQ Docket No. 2004-0555-PST-E. The commission will consider the Administrative Law Judge's Proposal for Decision and Order regarding the enforcement action against Ammar Food, Inc., dba Sunrise Food Mart on a date and time to be determined by the Office of the Chief Clerk in Room 201S of Building E, 12100 N. Interstate 35, Austin, Texas. This posting is Notice of Opportunity to Comment on the Proposal for Decision and Order. The comment period will end 30 days from date of this publication. Written public comments should be submitted to the Office of the Chief Clerk, MC-105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087. If you have any questions or need assistance, please contact Paul Munguía, Office of the Chief Clerk, (512) 239-3300.

TRD-200704934
LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: October 17, 2007

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Proposal for Decision

The State Office of Administrative Hearings issued a Proposal for Decision and Order to the Texas Commission on Environmental Quality on October 10, 2007, in the matter of the Executive Director of the Texas Commission on Environmental Quality, Petitioner v. Kaspar Electroplating Corporation; SOAH Docket No. 582-07-2334; TCEQ Docket No. 2006-1470-IHW-E. The commission will consider the Administrative Law Judge's Proposal for Decision and Order regarding the enforcement action against Kaspar Electroplating Corporation on a date and time to be determined by the Office of the Chief Clerk in Room 201S of Building E, 12100 N. Interstate 35, Austin, Texas. This posting is Notice of Opportunity to Comment on the Proposal for Decision and Order. The comment period will end 30 days from date of this publication. Written public comments should be submitted to the Office of the Chief Clerk, MC-105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087. If you have any questions or need assistance, please contact Paul Munguía, Office of the Chief Clerk, (512) 239-3300.

TRD-200704935

LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: October 17, 2007

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Proposal for Decision

The State Office of Administrative Hearings issued a Proposal for Decision and Order to the Texas Commission on Environmental Quality on October 15, 2007, in the matter of the Executive Director of the Texas Commission on Environmental Quality, Petitioner v. Tommy Joe Thomas dba Deer Trail Mobile Home Park; SOAH Docket No. 582-07-3175; TCEQ Docket No. 2006-1654-PWS-E. The commission will consider the Administrative Law Judge's Proposal for Decision and Order regarding the enforcement action against Tommy Joe Thomas dba Deer Trail Mobile Home Park on a date and time to be determined by the Office of the Chief Clerk in Room 201S of Building E, 12100 N. Interstate 35, Austin, Texas. This posting is Notice of Opportunity to Comment on the Proposal for Decision and Order. The comment period will end 30 days from date of this publication. Written public comments should be submitted to the Office of the Chief Clerk, MC-105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087. If you have any questions or need assistance, please contact Paul Munguía, Office of the Chief Clerk, (512) 239-3300.

TRD-200704936
LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: October 17, 2007

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Proposal for Decision

The State Office of Administrative Hearings issued a Proposal for Decision and Order to the Texas Commission on Environmental Quality on October 16, 2007, in the matter of the Executive Director of the Texas Commission on Environmental Quality, Petitioner v. SNW Enterprises, Inc., dba Super Stop 12 and Super Stop 13; SOAH Docket No. 582-06-2152; TCEQ Docket No. 2005-1300-PST-E. The commission will consider the Administrative Law Judge's Proposal for Decision and Order regarding the enforcement action against SNW Enterprises, Inc., dba Super Stop 12 and Super Stop 13 on a date and time to be determined by the Office of the Chief Clerk in Room 201S of Building E, 12100 N. Interstate 35, Austin, Texas. This posting is Notice of Opportunity to Comment on the Proposal for Decision and Order. The comment period will end 30 days from date of this publication. Written public comments should be submitted to the Office of the Chief Clerk, MC-105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087. If you have any questions or need assistance, please contact Paul Munguía, Office of the Chief Clerk, (512) 239-3300.

TRD-200704937
LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: October 17, 2007

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Texas Ethics Commission

List of Late Filers

Listed below are the names of filers from the Texas Ethics Commission who did not file reports, or failed to pay penalty fines for late reports in reference to the listed filing deadline. If you have any questions, you may contact Robbie Douglas at (512) 463-5780 or (800) 325-8506.

Deadline: Lobby Activities Report due June 10, 2007

Thomas Rene Aguillon, 1900 Blue Crest Lane, San Antonio, Texas 78246

TRD-200704907
David A. Reisman
Executive Director
Texas Ethics Commission
Filed: October 16, 2007

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Texas Facilities Commission

Request for Proposal

The Texas Facilities Commission (TFC), on behalf of the Texas Department of Criminal Justice (TDCJ), announces the issuance of Request for Proposals (RFP) #303-8-10476 TFC seeks a 10 year lease of approximately 9,857 square feet of office space in Coryell County, Texas.

The deadline for questions is November 5, 2007 and the deadline for proposals is November 19, 2007 at 3:00 p.m. The anticipated award date is December 3, 2007. TFC reserves the right to accept or reject any or all proposals submitted. TFC is under no legal or other obligation to execute a lease on the basis of this notice or the distribution of a RFP. Neither this notice nor the RFP commits TFC to pay for any costs incurred prior to the award of a grant.

Parties interested in submitting a proposal may obtain information by contacting TFC Purchaser Myra Beer at (512) 463-5773. A copy of the RFP may be downloaded from the Electronic State Business Daily at: http://esbd.cpa.state.tx.us/1380/bid_show.cfm?bidid=73443.

TRD-200704913
Kay Molina
General Counsel
Texas Facilities Commission
Filed: October 16, 2007

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Texas Health and Human Services Commission

Public Notice

The Texas Health and Human Services Commission (HHSC) announces its intent to submit an amendment to the Home and Community-based Services (HCS) waiver program. HCS is a 1915(c) waiver, which is a Medicaid Home and Community-Based Service waiver under the authority of §1915(c) of the Social Security Act. The current waiver is scheduled to expire August 31, 2008.

The HCS Program provides individualized services and supports to persons with mental retardation or a related condition who are living in their own homes, their families' homes, or other community settings such as foster/companion care homes, or small group homes.

HCS is designed to serve aged and disabled adults. Services include case management, adaptive aids, minor home modifications, counseling and therapies (includes audiology, speech/language pathology, occupational therapy, physical therapy, dietary services, social work, and psychology), dental treatment, nursing, residential assistance, supported home living, foster/companion care, supervised living, residential support, respite, day habilitation, and supported employment.

The purpose of this waiver amendment is to add the Consumer-Directed Services (CDS) option for individuals who choose to self-direct supported home living or respite. The proposed waiver amendment is effective January 1, 2008.

HHSC is requesting that the waiver amendment be approved for a seven-month period beginning January 1, 2008, through August 31, 2008. This amendment maintains cost neutrality of service-costs for federal fiscal years 2007 through 2008.

To obtain copies of the proposed waiver amendment, interested parties may contact Betsy Johnson by mail at Texas Health and Human Services Commission, P.O. Box 85200, mail code H-620, Austin, Texas 78708-5200, phone (512) 491-1199, fax (512) 491-1953, or by e-mail at betsy.johnson@hhsc.state.tx.us.

TRD-200704866
Steve Aragón
Chief Counsel
Texas Health and Human Services Commission
Filed: October 15, 2007

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Temporary Assistance for Needy Families (TANF) State Plan, Request for Comments

The Texas Health and Human Services Commission (HHSC) will post the draft Temporary Assistance for Needy Families (TANF) State Plan on the HHSC Internet web site at *http://www.hhsc.state.tx.us/* for public review. Comments may be submitted during the public comment period that begins November 2, 2007 and ends December 18, 2007. Comments must be submitted in writing to Kim Dutchover, HHSC, Program and Policy, 909 W. 45th Street, P.O. Box 12668, Austin TX 78711-2668 or electronically to *kim.dutchover@hhsc.state.tx.us.* For additional information or a copy of the TANF State Plan, contact Kim Dutchover at (512) 206-5326.

TRD-200704922
Steve Aragón
Chief Counsel
Texas Health and Human Services Commission
Filed: October 17, 2007

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Department of State Health Services

Notice of Agreed Orders

Notice is hereby given that the Department of State Health Services (department) issued Agreed Orders to the following registrants:

Carrollton Kinesiology and Chiropractic (Registration Number R22163) of Carrollton. A total penalty of $2,000 shall be paid by registrant for violations of 25 Texas Administrative Code, Chapter 289. The registrant shall also comply with additional settlement agreement requirements.

The Houston Internal Medicine and Wellness Center (Registration Number R27788) of Houston. A total penalty of $1,000 shall be paid by registrant for violation of 25 Texas Administrative Code, Chapter 289. The registrant shall also comply with additional settlement agreement requirements.

Mandes Inspection & Testing, Inc. (License Number L05220) of Houston. A total penalty of $2,000 shall be paid by registrant for violations of 25 Texas Administrative Code, Chapter 289. The registrant shall also comply with additional settlement agreement requirements.

Ernest P. Edgell (License Number L05113) of Houston. The registrant shall be reinstated, as a radiographer trainer as of November 1, 2007, and the department shall not assess an administrative penalty for violations of 25 Texas Administrative Code, Chapter 289. The registrant shall also comply with additional settlement agreement requirements.

A copy of all relevant material is available, by appointment, for public inspection at the Department of State Health Services, Exchange Building, 8407 Wall Street, Austin, Texas, telephone (512) 834-6688, press "1" then press "0", Monday - Friday, 8:00 a.m. to 5:00 p.m. (except holidays).

TRD-200704908
Lisa Hernandez
General Counsel
Department of State Health Services
Filed: October 16, 2007

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Texas Department of Housing and Community Affairs

HOME Investment Partnerships Program CHDO Open Cycle Notice of Funding Availability

Single Family and Rental Housing Development Program

1) Summary

a) The Texas Department of Housing and Community Affairs ("the Department") announces the availability of approximately $6,000,000 in funding from the HOME Investment Partnerships Program for Community Housing Development Organizations (CHDO) to develop affordable single family housing for homeownership and rental housing for low-income Texans. The availability and use of these funds is subject to the State HOME Rules at Title 10 Texas Administrative Code (10 TAC) Chapter 53 ("HOME Rules") in effect at the time the application is submitted, the Federal HOME regulations governing the HOME program (24 CFR Part 92), and Chapter 2306, Texas Government Code. Other Federal regulations may also apply such as, but not limited to, 24 CFR parts 50 and 58 for environmental requirements, Davis-Bacon Act for labor standards, 24 CFR §85.36 and §84.42 for conflict of interest and 24 CFR part 5, subpart A for fair housing. Applicants are encouraged to familiarize themselves with all of the applicable state and federal rules that govern the program.

2) Allocation of HOME Funds

a) These funds are made available through unawarded and deobligated HOME funds that are set-aside for eligible CHDO single family developments and rental housing development proposals which involve new construction, rehabilitation, acquisition and rehabilitation of affordable housing development activities. All funds released under this NOFA are to be used for the creation of affordable single family and rental housing for low-income Texans earning 80 percent or less of the Area Median Family Income (AMFI).

b) A rental application may be submitted in a PJ if the HOME units requested are serving persons with disabilities; however the submission will not be processed, reviewed or potentially recommended to the Board unless there is a balance of uncommitted funds available from the 5% PJ funds.

c) In accordance with 10 TAC §53.58, this NOFA will be an Open Application Cycle and funding will be available on a first-come, first-served Statewide basis. Applications will be accepted until 5:00 p.m. June 2, 2008 unless all funds are committed prior to this date. Applicants are encouraged to review the application process cited above and

described herein. Applications that do not meet minimum threshold and financial feasibility will not be considered for funding.

d) The Department awards HOME funds, typically as a loan, to eligible recipients for the provision of housing for low, very low and extremely low-income individuals and families, pursuant to 10 TAC §53.54(2). Award amounts are limited to no more than $3 million per development. The minimum HOME award may not be less than $1,000 per HOME assisted unit. The maximum award may not exceed 90% of the total development costs. The remaining 10% of total development cost must be in the form of loans or grants from private or public entities. The per-unit subsidy may not exceed the per-unit dollar limits established by the United States Department of Housing and Urban Development (HUD) under §221(d)(3) of the National Housing Act which are applicable to the area in which the development is located, and as published by HUD. For rental housing developments, the Department's underwriting guidelines in 10 TAC §1.32 will be used which set as a minimum feasibility a 1.15 debt coverage ratio. Where the anticipated debt coverage ratio in the year after completion exceeds 1.35, a loan or partial loan will be recommended.

e) Each CHDO that is awarded HOME funds may also be eligible to receive a grant for CHDO Operating Expenses. Applicants will be required to submit organizational operating budgets, audits and other financial and non-financial materials detailed in the HOME application. The award amount for CHDO Operating Expenses shall not exceed $50,000. Awards for operating expenses will be drawn over a two-year period of time. The Department reserves the right to limit an Applicant to receive not more than one award of CHDO Operating Expenses during the same fiscal year and to further limit the award of CHDO Operating Expenses.

f) Developments involving rehabilitation must establish that the rehabilitation will substantially improve the condition of the housing and will involve at least $12,000 per unit in direct hard costs, unless the property is also being financed by the United States Department of Agriculture's Rural Development program. When HOME funds are used for a rehabilitation development the entire unit must be brought up to the applicable property standards, pursuant to 24 CFR §92.251(a)(1).

3) Eligible and Ineligible Activities

a) Eligible activities will include those permissible under the federal HOME Rule at 24 CFR §92.205, the State HOME Rules at 10 TAC §53.53(g), which involve only the acquisition, rehabilitation and construction of affordable developments.

b) Prohibited activities include those under federal HOME rules at 24 CFR §92.214 and 10 TAC §53.56.

c) Development funds will not be eligible for use in a Participating Jurisdiction (PJ).

d) Refinancing of federally financed properties or use of HOME funds for properties constructed within five years of the submission of an Application for assistance will not be permissible.

4) Eligible and Ineligible Applicants

a) The Department provides HOME CHDO funding to qualified nonprofit organizations eligible for CHDO certification. CHDO Certification will be awarded in accordance with the rules and procedures as set forth in the HOME rules at 10 TAC §53.63, Community Housing Development Organization (CHDO) Certification. A separate application process is required for CHDO Certification. Review and approval of the CHDO Certification occurs during the threshold review process, however Applicants will not receive a formal certification until the award of the HOME funds has been approved by the Department's Board. The CHDO Application package will be available with all other application materials on the Department's website. A new Application for CHDO certification must be submitted to the Department with each new Application for HOME Development funds under the CHDO set aside.

b) Only Applicants that have proven success and acceptable performance on a previous HOME contract received from the Department, as evidenced by the contract and determined by the Department, are eligible to apply for funding for single family development.

c) CHDO Applicants must be the Sponsor, Owner or Developer of the proposed Development. Applicants who apply through a Limited Partnership will be required to provide evidence, at the time of CHDO certification and commitment, that the CHDO Applicant is the Managing General Partner of the partnership and has effective control (decision making authority) over the development and management of the property, pursuant to 24 CFR §92.300.

d) Applicants may be ineligible for funding if they meet any of the criteria listed in §53.53(b) of the Department's HOME rule, clarification for §53.53(b)(6) creates ineligibility with any requirements under 10 TAC §49.5(a) excluding paragraphs (5) - (8). Applicants are encouraged to familiarize themselves with the Department's certification and debarment policies prior to application submission.

5) Matching Funds

a) Applicants will be required to submit documentation on all financial resources to be used in the development that may be considered match to the Department's federal HOME requirements. Applicants must provide firm commitments as defined in accordance with the Federal HOME rules at 24 CFR §92.218 and the Department's Match Guide and will be provided with the appropriate forms and instructions on how to report eligible match.

6) Rental Housing Development Affordability Requirements

a) Applicants should be aware that there are minimum affordability standards necessary for HOME assisted rental developments. Initial occupancy income restrictions require that at least 90% of the units are affordable to persons below 60% AMFI and that 20% of the units are affordable to person below 50% AMFI. Over the remaining affordability period at least 20% of HOME assisted units should be affordable to persons earning 50% or less than the AMFI, all remaining units must be affordable to persons earning 80% or less than the AMFI.

b) Each development will have a two-tier affordability term.

i) The first tier will entail the federally required affordability term. For new construction or acquisition of new housing, this term is 20 years. For rehabilitation or acquisition of existing housing, the term is 5 years if the HOME investment is less than $15,000 per unit; 10 years if the HOME investment is $15,000 to $40,000 per unit; and 15 years if the HOME investment is greater than $40,000 per unit. This first tier is subject to all federal laws and regulations regarding HOME requirements, recapture, net proceeds and affordability.

ii) The second tier of affordability is the additional number of years required to bring the total term of affordability up to 30 years or the term of the loan agreement. For example, the second tier of affordability on a 10-year federal affordability term is 20 additional years. The second tier, or remaining term, is subject only to state regulations and affordability requirements.

c) Properties will be restricted under a Land Use Restriction Agreement ("LURA"), or other such instrument as determined by the Department for these terms. Among other restrictions, the LURA may require the owner of the property to continue to accept subsidies which may be offered by the federal government, prohibit the owner from exercising an option to prepay a federally insured loan, impose tenant

income-based occupancy and rental restrictions, or impose any of these and other restrictions as deemed necessary at the sole discretion of the Department in order to preserve the property as affordable housing on a case-by-case basis.

7) Single Family Development Affordability Requirements

a) Applicants must ensure that the minimum affordability requirements are met for HOME assisted single family developments pursuant to 24 CFR §92.254. The Department has elected the recapture provision to recoup all or part of the HOME funds provided to the homebuyer, if the housing does not continue to be the principal residence of the family assisted for the duration of the required affordability period.

b) Properties will be restricted under the deed of trust or other such instrument as determined and drafted by the Department for these terms.

8) Site and Development Restrictions

a) Pursuant to 24 CFR §92.251, housing that is constructed or rehabilitated with HOME funds must meet all applicable local codes, rehabilitation standards, ordinances, and zoning ordinances at the time of project completion. In the absence of a local code for new construction or rehabilitation, HOME-assisted new construction or rehabilitation must meet, as applicable, one of three model codes: Uniform Building Code (ICBO), National Building Code (BOCA), Standard (Southern) Building Code (SBCCI); or the Council of American Building Officials (CABO) one or two family code; or the Minimum Property Standards (MPS) in 24 CFR §200.925 or §200.926d. To avoid duplicative inspections when Federal Housing Administration (FHA) financing is involved in a HOME-assisted property, a participating jurisdiction may rely on a Minimum Property Standards (MPS) inspection performed by a qualified person. Newly constructed housing must meet the current edition of the Model Energy Code published by the Council of American Building Officials.

b) All other HOME-assisted housing (e.g., acquisition) must meet all applicable State and local housing quality standards and code requirements and if there are no such standards or code requirements, the housing must meet the housing quality standards in 24 CFR §982.401. When HOME funds are used for a rehabilitation development the entire unit must be brought up to the applicable property standards, pursuant to 24 CFR §92.251(a)(1).

c) Housing must meet the accessibility requirements at 24 CFR part 8, which implements Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and covered multifamily dwellings, as defined at 24 CFR §100.201, must also meet the design and construction requirements at 24 CFR §100.205, which implement the Fair Housing Act (42 U.S.C. §§3601 - 3619). Additionally, pursuant to the 2007 Qualified Allocation Plan (QAP), §49.9(h)(4)(G), Developments involving New Construction (excluding New Construction of nonresidential buildings) where some Units are two-stories and are normally exempt from Fair Housing accessibility requirements, a minimum of 20% of each Unit type (i.e. one bedroom, two bedroom, three bedroom) must provide an accessible entry level and all common-use facilities in compliance with the Fair Housing Guidelines, and include a minimum of one bedroom and one bathroom or powder room at the entry level. A certification will be required after the Development is completed from an inspector, architect, or accessibility specialist. Any Developments designed as single family structures must also satisfy the requirements of §2306.514, Texas Government Code.

d) All of the 2007 Qualified Allocation Plan and Rules 10 TAC §49.6, excluding subsections (d), (f), (g) and (h) apply.

e) Developments involving new construction will be limited to 252 Units. These maximum Unit limitations also apply to those Developments which involve a combination of rehabilitation and new construction. Developments that consist solely of acquisition/rehabilitation or rehabilitation only may exceed the maximum Unit restrictions. The minimum number of units shall be 4 units, pursuant to 10 TAC §53.53(f).

9) Threshold Criteria

a) Housing units subsidized by HOME funds must be affordable to low, very-low or extremely low-income persons. Mixed Income rental developments may only receive funds for units that meet the HOME program affordability standards. All applications intended to serve persons with disabilities must adhere to the Department's Integrated Housing Rule at 10 TAC §1.15.

b) For funds being used for Rental Housing Developments, the Recipient must establish a reserve account consistent with §2306.186, Texas Government Code, and as further described in 10 TAC §1.37, pursuant to 10 TAC §53.53(i).

c) All applications will be required to meet Section 8 Housing Quality Standards detailed under 24 CFR §982.401, Texas Minimum Construction Standards, as well as the Fair Housing Accessibility Standards and Section 504 of the Rehabilitation Act of 1973. Developments must also meet all local building codes or standards that may apply. If the development is located within a jurisdiction that does not have building codes, developments must meet the most current International Building Code.

d) Pursuant to 10 TAC §53.53(j), Applicants for Rental Development activities will be required to provide written notification to each of the following persons or entities 14 days prior to the submission of any application package. Failure to provide written notifications 14 days prior to the submission of an application package at a minimum will cause an application to be terminated under competitive application cycles. Applicants must provide notifications to:

i) the executive officer and elected members of the governing board of the community where the development will be located. This includes municipal governing boards, city councils, and County governing boards;

ii) all neighborhood organizations whose defined boundaries include the location of the Development;

iii) executive officer and Board President of the school district that covers the location of the Development;

iv) residents of occupied housing units that may be rehabilitated, reconstructed or demolished; and

v) the State Representative and State Senator whose district covers the location of the Development.

vi) the notification letter must include, but not be limited to, the address of the development site, the number of units to be built or rehabilitated, the proposed rent and income levels to be served, and all other details required of the NOFA and Application Manual.

e) The following Threshold Criteria listed in this subsection are mandatory requirements at the time of Application submission unless specifically indicated otherwise:

i) An applicant shall provide certification that no person or entity that would benefit from the award of HOME funds has provided a source of match or has satisfied the Applicant's cash reserve obligation or made promises in connection therewith, pursuant to 10 TAC §53.53(k).

ii) All contractors, consulting firms, and Administrators must sign and submit an affidavit with each draw to attest that each request for payment of HOME funds is for the actual cost of providing a service and

that the service does not violate any conflict of interest provisions, pursuant to §53.53(l).

iii) To encourage the inclusion of families and individuals with the highest need for affordable housing, applicants for rental housing development must target a minimum of 5% of the total units for individuals or families earning 30% or less of area medium income for the development site.

iv) To encourage the involvement of other public agencies and private entities in affordable housing, applicants must provide a minimum of 10% of the total development cost from other public agencies and/or private entities.

v) For rental housing developments, to encourage reasonable and cost effective building strategies, applicants must limit development cost per square foot to $70.00 for new construction and $38.00 for rehabilitation. Please note, use normal rounding when performing this calculation. ($69.50 and higher would be rounded up to $70.00, $69.49 and lower would be rounded down to $69.00).

vi) All of the 2007 Qualified Allocation Plan and Rules at 10 TAC §49.9(h), excluding paragraphs (4)(I), (11), (12) and (15).

vii) An applicant is not eligible to apply for funds or any other assistance from the Department unless audits are current at the time of application or the Audit Certification Form has been submitted to the Department in a satisfactory format on or before the application deadline for funds or other assistance per 10 TAC §1.3(b).

10) Review Process

a) Pursuant to 10 TAC §53.58, each application will be handled on a first-come, first-served basis as further described in this section. Each application will be assigned a "received date" based on the date and time it is physically received by the Department. Then each application will be reviewed on its own merits in three review phases, as applicable. Applications will continue to be prioritized for funding based on their "received date" unless they do not proceed into the next phase(s) of review. Applications proceeding in a timely fashion through a phase will take priority over applications that may have an earlier "received date" but that did not timely complete a phase of review. Applications will be reviewed for Applicant and Activity Eligibility, Threshold Criteria, and Financial Feasibility as described in this NOFA.

b) Pursuant to the QAP §49.5(a)(9) if a submitted Application has an entire Volume of the application missing; has excessive omissions of documentation from the Threshold Criteria or Uniform Application documentation; or is so unclear, disjointed or incomplete that a thorough review cannot reasonably be performed by the Department, as determined by the Department. If an application is determined ineligible pursuant to this section, the Application will be terminated without being processed as an Administrative Deficiency.

Phase One will begin as of the received date. Applications not being considered under the CHDO Set-Aside will be passed through to Phase Two upon receipt. Phase One will only entail the review of the CHDO Certification package. The Department will ensure review of these materials and issue notice of any deficiencies on the CHDO Certification package within 30 days of the received date. Applicants who are able to resolve their deficiencies within seven business days will be forwarded into Phase Two and will continue to be prioritized by their received date. Applications with deficiencies not cured within seven business days, will be retained in Phase One until all deficiencies have been addressed/resolved by the Applicant to the Department's satisfaction. Only upon satisfaction of all deficiencies will the Application be forwarded to Phase Two. Applications that have not proceeded out of Phase One within 50 days of the received date will be terminated and must reapply for consideration of funds.

Phase Two will include a review of all application requirements. The Department will ensure review of materials required under the NOFA, and application guidelines and will issue notice of any deficiencies as to threshold and eligibility within 45 days of the date it enters Phase Two. Applicants who are able to resolve their deficiencies within seven business days will be forwarded into Phase Three and will continue to be prioritized by their received date. Applications with deficiencies not cured within seven business days, will be retained in Phase Two until all deficiencies have been addressed/resolved by the Applicant to the Department's satisfaction. Only upon satisfaction of all deficiencies, and of threshold and eligibility requirements will the Application be forwarded to Phase Three. An Application that has not proceeded out of Phase Two within 65 days of the date it entered Phase Two will be terminated and must reapply for consideration of funds. Application submitted for non-development Activities will not go through a Phase Three evaluation.

Phase Three will include a comprehensive review for material noncompliance and financial feasibility by the Department. Financial feasibility reviews will be conducted by the Real Estate Analysis (REA) Division consistent with 10 TAC §1.32. REA will create an underwriting report identifying staff's recommended loan terms, the loan or grant amount and any conditions to be placed on the development. The Department will ensure financial feasibility review and issue notice of any required deficiencies for that feasibility review within 45 days of the date it enters Phase Three. Applicants who are able to resolve their deficiencies within seven business days will be forwarded into "Recommended Status" and will continue to be prioritized by their received date. Applications with deficiencies not satisfied within seven business days, will be retained in Phase Three until all deficiencies have been addressed/resolved by the Applicant to the Department's satisfaction. Only upon resolution of all deficiencies will the Application be forwarded to the Department's Executive Awards Review and Advisory Committee for recommendation to the Board. Any application that has not finished Phase Three within 65 days of the date it entered Phase Three will be terminated and must reapply for consideration of funds.

Upon completion of the applicable final review Phase, applications will be presented to the Executive Awards Review and Advisory Committee (the Committee). If satisfactory, the Committee will then recommend the award of funds to the Board, as long as HOME funds are still available for this Activity under the applicable NOFA. If the Application is recommended at least 14 days prior to the next Board meeting, it will be placed on the next Board meeting's agenda. If the Application is recommended with less than 14 days before the next Board meeting, the recommendation will be placed on the subsequent month's Board meeting agenda. Applications which are not recommended by the committee will be either returned to Department Staff or terminated.

Because applications are processed in the order they are received by the Department, it is possible that the Department will expend all available HOME funds before an application has completed all phases of its review. In the case that all HOME funds are committed before an application has completed all phases of the review process, the Department will notify the applicant that their application will remain active for 90 days in its current phase. If new HOME funds become available, applications will continue onward with their review without losing their received date priority. If HOME funds do not become available within 90 days of the notification, the Applicant will be notified that their application is no longer under consideration. The applicant must reapply to be considered for future funding. If on the date an application is received by the Department, no funds are available under this NOFA, the applicant will be notified that no funds exist under the NOFA and the application will not be processed.

c) Pursuant to 10 TAC §53.59(3), a site visit will be conducted as part of the HOME Program development feasibility review. Applicants must receive recommendation for approval from the Department to be considered for HOME funding by the Board.

d) The Department may decline to consider any Application if the proposed activities do not, in the Department's sole determination, represent a prudent use of the Department's funds. The Department is not obligated to proceed with any action pertaining to any Applications which are received, and may decide it is in the Department's best interest to refrain from pursuing any selection process. The Department strives, through its loan terms, to securitize its funding while ensuring the financial feasibility of a Development. The Department reserves the right to negotiate individual elements of any Application.

e) In accordance with §2306.082 Texas Government Code and 10 TAC §53.58(d), it is the Department's policy to encourage the use of appropriate alternative dispute resolution procedures ("ADR") under the Governmental Dispute Resolution Act, Chapter 2009, Texas Government Code, to assist in resolving disputes under the Department's jurisdiction. As described in Chapter 154, Civil Practices and Remedies Code, ADR procedures include mediation. Except as prohibited by the Department's ex parte communications policy, the Department encourages informal communications between Department staff and Applicants, and other interested persons, to exchange information and informally resolve disputes. The Department also has administrative appeals processes to fairly and expeditiously resolve disputes. If at anytime an Applicant or other person would like to engage the Department in an ADR procedure, the person may send a proposal to the Department's Dispute Resolution Coordinator. For additional information on the Department's ADR Policy, see the Department's General Administrative Rule on ADR at 10 Texas Administrative Code §1.17.

f) An Applicant may appeal decisions made by staff in accordance with 10 TAC §1.7.

11) Application Submission

a) All applications submitted under this NOFA must be received on or before 5:00 p.m. on June 2, 2008. The Department will accept applications from 8 a.m. to 5 p.m. each business day, excluding federal and state holidays from the date this NOFA is published on the Department's web site until the deadline. For questions regarding this NOFA please contact Barbara Skinner at (512) 475-1643 or via e-mail at barbara.skinner@tdhca.state.tx.us or Skip Beaird at (512) 475-0908 or via e-mail at skip.beaird@tdhca.state.tx.us.

b) All applications must be submitted, and provide all documentation, as described in this NOFA and associated application materials

c) Applicants must submit one complete printed copy of all Application materials and one complete scanned copy of the Application materials as detailed in the 2007 Final ASPM. All scanned copies must be scanned in accordance with the guidance provided in the 2007 Final ASPM.

d) The application consists of three parts: bound items, unbound items and electronic submission. A complete application for each proposed development must be submitted. Incomplete applications or improperly bound applications will not be accepted. The bound volumes of the application must be bound using red pressboard binders. Each volume must be submitted in a separate red pressboard binder. If the required documentation for a volume exceeds the capacity of one binder, a second binder may be used to subdivide the volume. Applicants must submit one complete printed copy of all application materials and one complete scanned copy stored on compact disc of the application materials as detailed in the 2007 Final ASPM. All scanned copies must be scanned in accordance with the guidance provided in the 2007 Final ASPM.

e) Third party reports - If third party reports are not received at the time of application submission, the Application will be terminated.

f) All Application materials including manuals, NOFA, program guidelines, and all applicable HOME rules, will be available on the Department's website at www.tdhca.state.tx.us. Applications will be required to adhere to the HOME Rule and threshold requirements in effect at the time of the Application submission. Applications must be on forms provided by the Department, and cannot be altered or modified and must be in final form before submitting them to the Department.

g) Applicants are required to remit a non-refundable Application fee payable to the Texas Department of Housing and Community Affairs in the amount of $500.00 per Application. Payment must be in the form of a check, cashier's check or money order. Do not send cash. Section 2306.147(b) of the Texas Government Code requires the Department to waive Application fees for nonprofit organizations that offer expanded services such as child care, nutrition programs, job training assistance, health services, or human services. These organizations must include proof of their exempt status and a description of their supportive services in lieu of the Application fee. The Application fee is not an allowable or reimbursable cost under the HOME Program.

h) Applications must be sent via overnight delivery to:

HOME Division

Texas Department of Housing and Community Affairs

Attn: Barbara Skinner

221 East 11th Street

Austin, TX 78701-2410

or via the U.S. Postal Service to:

HOME Division

Texas Department of Housing and Community Affairs

Attn: Barbara Skinner

Post Office Box 13941

Austin, TX 78711-3941

NOTE: This NOFA does not include the text of the various applicable regulatory provisions that may be important to the particular HOME Single Family and Rental Housing Development Program. For proper completion of the application, the Department strongly encourages potential applicants to review all applicable State and Federal regulations.

TRD-200704925
Michael Gerber
Executive Director
Texas Department of Housing and Community Affairs
Filed: October 17, 2007

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HOME Investment Partnerships Program Housing Trust Fund Notice of Funding Availability

Rental Production Program

1) Summary

a) The Texas Department of Housing and Community Affairs ("the Department") announces the availability of approximately $844,000 in funding from the Housing Trust Fund for financing of affordable rental housing for very low-income and extremely low-income Texans. The

availability and use of these funds is subject to the state Housing Trust Fund Rules at Title 10 Texas Administrative Code (10 TAC) Chapter 51 ("HTF Rules") and Chapter 2306, Texas Government Code in effect at the time an application is submitted. Applicants are encouraged to familiarize themselves with all of the applicable rules that govern the program.

2) Allocation of Housing Trust Funds

a) These funds are made available through General Revenue Funds appropriated to the Housing Trust Fund for financing rental housing developments which involve new construction, rehabilitation or acquisition and rehabilitation. All funds released under this NOFA are to be used for the subsidizing of affordable rental housing units that target very low-income Texans earning 50 percent or less of Area Median Family Income (AMFI) and are not being funded with Housing Tax Credits. Additionally, if the funds are used to target extremely low-income Texans earning 30 percent or less of the AMFI and those units are not designated to serve extremely low-income households through another subsidy source, the Department may allow a forgivable loan only for the extremely low-income units.

b) In accordance with 10 TAC §51.6(d), this NOFA will be an Open Application Cycle and funding will be available on a first-come, first-served statewide basis. Applications will be accepted until 5:00 p.m. May 1, 2008 unless all funds are committed prior to this date. Applicants are encouraged to review the application process cited above and described herein. Applications that do not meet minimum threshold and financial feasibility will not be considered for funding.

c) The Department will award Housing Trust Fund funds as a loan, to eligible recipients for the provision of housing for very low and extremely low-income individuals and families. Funds will be allocated primarily in rural areas and will not be awarded to developments that have received an allocation of Housing Tax Credits so that special emphasis is given to smaller proposed developments. The Department's underwriting guidelines at 10 TAC §1.32 will be used which set as a minimum feasibility a 1.15 debt coverage ratio.

d) Award amounts are limited to no more than $250,000 per development.

e) Developments involving rehabilitation must establish that the rehabilitation will substantially improve the condition of the housing and will involve at least $12,000 per unit in direct hard costs, unless the property is also being financed by the United States Department of Agriculture's Rural Development program.

3) Eligible and Ineligible Activities and Restrictions

a) Eligible activities will include the financing, new construction, acquisition and/or rehabilitation of affordable rental housing developments.

b) Ineligible activities include the acquisition, rehabilitation, reconstruction or refinancing of affordable rental housing constructed within the past 5 years or previously funded by the Department.

c) Ineligible activities include financing for any property that also has received or will receive Housing Tax Credits.

d) Restrictions include the displacement of existing affordable housing. Pursuant to §2306.203(a)(4) of the Texas Government Code, Housing Trust Funds shall not be utilized on a development that has the effect of permanently displacing low, very low, and extremely low income persons and families. Low-Income persons who may be temporarily displaced by the rehabilitation of affordable housing may be eligible for compensation of moving and relocation expenses. If a Housing Trust Fund recipient violates the permanent dislocation provision of this subsection, that recipient risks loss of Housing Trust Funds and the landlord/developer must pay the affected tenant's costs and all moving expenses.

4) Eligible and Ineligible Applicants

a) The Department provides HTF to qualified local units of government, public housing authorities, community housing development organizations, nonprofit organizations and for-profit entities.

b) Ineligible Applicants will include the following:

i) Previously funded recipient(s) whose Housing Trust Funds have been partially or fully deobligated due to failure to meet contractual obligations during the 12 months prior to the current funding cycle;

ii) Applicants, or persons affiliated with the Applicant that have been barred, suspended, or terminated from procurement in a state or federal program and listed in the List of Parties Excluded from Federal Procurement of Non-procurement Programs;

iii) Applicants or persons affiliated with the Applicant that are subject of enforcement action under state or federal securities law, or are the subject of an enforcement proceeding with a state or federal agency or another governmental entity;

iv) Applicants or persons affiliated with the Applicant that have unresolved audit findings related to previous or current funding agreements with the Department;

v) Applicants or persons affiliated with the Applicant that have delinquent loans, fees or other commitments with the Department, until payment is made;

vi) Applicants who have not satisfied all threshold requirements described in this title, and the NOFA to which they are responding, and for which Administrative Deficiencies were unresolved;

vii) Applicants who have submitted incomplete Applications;

viii) Applicants or persons affiliated with the Applicant that have been otherwise barred by the Department;

ix) Applicants are subject to 10 TAC §1.13; or

x) Applicants or persons affiliated with the Applicant that have breached a contract with a public agency.

c) Each Application will be reviewed for its compliance history by the Department, consistent with 10 TAC Chapter 60. Applicants, or persons affiliated with an Application, found to have a Development or Contract in Material Noncompliance with the Department, will have their Application(s) terminated.

5) Affordability Requirements

a) Pursuant to §2306.203(6) of the Texas Government Code, Applicants proposing multifamily housing, new construction or rehabilitation, will be required to guarantee the Development will remain affordable to income qualified families or individuals for a period of 20 years.

b) Properties will be restricted under a Land Use Restriction Agreement ("LURA"), or other such instrument as determined by the Department for these terms. Among other restrictions, the LURA may require the owner of the property to continue to accept subsidies which may be offered by the federal government, prohibit the owner from exercising an option to prepay a federally insured loan, impose tenant income-based occupancy and rental restrictions, or impose any of these and other restrictions as deemed necessary at the sole discretion of the Department in order to preserve the property as affordable housing on a case-by-case basis.

6) Site and Development Restrictions

a) Housing that is constructed or rehabilitated with HTF funds must meet all applicable local codes, rehabilitation standards, ordinances, and zoning ordinances at the time of project completion. In the absence of local codes applications will be required to meet Texas Minimum Construction Standards, as well as the Fair Housing Accessibility Standards and Section 504 of the Rehabilitation Act of 1973. Developments must also meet all local building codes or standards that may apply.

b) Housing must meet the accessibility requirements at 24 CFR Part 8, which implements Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and covered multifamily dwellings, as defined at 24 CFR §100.201, must also meet the design and construction requirements at 24 CFR §100.205, which implement the Fair Housing Act (42 U.S.C. §§3601 - 3619). Any Developments designed as single family structures must also satisfy the requirements of §2306.514, Texas Government Code.

7) Threshold Criteria

a) Housing units subsidized by HTF funds must be affordable to very-low or extremely low-income persons. Mixed Income rental developments may only receive funds for units that serve very-low or extremely low-income persons. All applications intended to serve persons with disabilities must adhere to the Department's Integrated Housing Rule at 10 TAC §1.15.

b) The Recipient must establish a reserve account consistent with §2306.186, Texas Government Code, and as further described in 10 TAC §1.37.

c) The following Threshold Criteria listed in this subsection are mandatory requirements at the time of Application submission unless specifically indicated otherwise. Applicants must demonstrate the application can meet the following threshold criteria to be considered for funding:

i) The application is consistent with the requirements established in the HTF rules and the NOFA.

ii) The Applicant provides evidence of its ability to carry out the proposal in the areas of financing, acquiring, rehabilitating, developing or managing an affordable housing development.

iii) To encourage the inclusion of families and individuals with the highest need for affordable housing, applicants must target units for individuals or families earning 50% or less of area medium income for the development site.

iv) To encourage reasonable and cost effective building strategies, applicants must limit development cost per square foot to $70.00 for new construction and $38.00 for rehabilitation. Please note, use normal rounding when performing this calculation. ($69.50 and higher would be rounded up to $70.00, $69.49 and lower would be rounded down to $69.00).

v) An applicant is not eligible to apply for funds or any other assistance from the Department unless audits are current at the time of application or the Audit Certification Form has been submitted to the Department in a satisfactory format on or before the application deadline for funds or other assistance per 10 TAC §1.3(b).

8) Review Process

a) Pursuant to 10 TAC §51.6, each application will be handled on a first-come, first-served basis as further described in this section. Each application will be assigned a "received date" based on the date and time it is physically received by the Department. Then each application will be reviewed on its own merits in three review phases, as applicable. Applications will continue to be prioritized for funding based on their "received date" unless they do not proceed into the next phase(s) of review. Applications proceeding in a timely fashion through a phase will take priority over applications that may have an earlier "received date" but that did not timely complete a phase of review. Applications will be reviewed for Applicant and Activity Eligibility, Threshold Criteria, and Financial Feasibility as described in this NOFA.

b) If a submitted Application has an entire Volume of the application missing; has excessive omissions of documentation from the Threshold Criteria or Uniform Application documentation; or is so unclear, disjointed or incomplete that a thorough review cannot reasonably be performed by the Department, as determined by the Department. If an application is determined ineligible pursuant to this section, the Application will be terminated without being processed as an Administrative Deficiency.

Phase One will include a review of all application requirements. The Department will ensure review of all application materials required under the NOFA and issue notice of any deficiencies on the application's satisfaction of threshold and eligibility within 45 days of the date it enters Phase One. Applicants who are able to resolve their deficiencies within seven business days will be forwarded into Phase Two and will continue to be prioritized by their received date. Applications which do not resolve all deficiencies within seven business days, will be retained in Phase One until all deficiencies have been addressed or resolved by the Applicant to the Department's satisfaction. Only upon resolution of all deficiencies will the Application be forwarded to Phase Two. Applications that have not left Phase One within 65 days of the date it entered Phase One will be terminated and must reapply for consideration of funds.

Phase Two will include a comprehensive review for material noncompliance and financial feasibility by the Department. Financial feasibility reviews will be conducted by the Department's Real Estate Analysis (REA) Division consistent with 10 TAC §1.32, Underwriting Rules and Guidelines. REA will draft an underwriting report that will identify staff's recommended loan terms, the loan or grant amount and any conditions to be placed on the development. The Department will ensure financial feasibility review and issue notice of any required deficiencies for that feasibility review within 45 days of the date it enters Phase Two. Applicants who are able to resolve their deficiencies within seven business days will be forwarded into "Recommended Status" and will continue to be prioritized by their received date. Applications with deficiencies not satisfied within seven business days, will be retained in Phase Two until Applicant resolves all deficiencies to the Department's satisfaction. Only upon satisfaction of all deficiencies will the Application be forwarded to the Department's Executive Award Review and Advisory Committee for final approval before recommendation to the Board. Any application that has not left Phase Two after 65 days of the date it entered Phase Two will be terminated and must reapply for consideration of funds.

Upon completion of the applicable final review Phase, applications will be presented to the Executive Awards Review and Advisory Committee (the Committee). If satisfactory, the Committee will then recommend the award of funds to the Board, as long as HTF funds are still available for this Activity under the applicable NOFA. If the Application is recommended at least 14 days prior to the next Board meeting, it will be placed on the next Board meeting's agenda. If the Application is recommended with less than 14 days before the next Board meeting, the recommendation will be placed on the subsequent month's Board meeting agenda. Applications which are not recommended by the committee will be either returned to Department Staff or terminated.

Because applications are processed in the order they are received by the Department, it is possible that the Department will expend all available HTF funds before an application has completed all phases of its review. In the case that all HTF are committed before an application

has completed all phases of the review process, the Department will notify the applicant that their application will remain active for 90 days in its current phase. If new HTF funds become available, applications will continue onward with their review without losing their received date priority. If HTF funds do not become available within 90 days of the notification, the Applicant will be notified that their application is no longer under consideration. The applicant must reapply to be considered for future funding. If on the date an application is received by the Department, no funds are available under this NOFA, the applicant will be notified that no funds exist under the NOFA and the application will not be processed.

c) Pursuant to 10 TAC §51.6(g)(1), a site visit will be conducted as part of the HTF Program development feasibility review. Applicants must receive recommendation for approval from the Department to be considered for HTF funding by the Board.

d) The Department may decline to consider any Application if the proposed activities do not, in the Department's sole determination, represent a prudent use of the Department's funds. The Department is not obligated to proceed with any action pertaining to any Applications which are received, and may decide it is in the Department's best interest to refrain from pursuing any selection process. The Department strives, through its loan terms, to securitize its funding while ensuring the financial feasibility of a Development. The Department reserves the right to negotiate individual elements of any Application.

e) In accordance with §2306.082 Texas Government Code and 10 TAC §51.6(j), it is the Department's policy to encourage the use of appropriate Alternative Dispute Resolution procedures ("ADR") under the Governmental Dispute Resolution Act, Chapter 2009, Texas Government Code, to assist in resolving disputes under the Department's jurisdiction. As described in Chapter 154, Civil Practices and Remedies Code, ADR procedures include mediation. Except as prohibited by the Department's ex parte communications policy, the Department encourages informal communications between Department staff and Applicants, and other interested persons, to exchange information and informally resolve disputes. The Department also has administrative appeals processes to fairly and expeditiously resolve disputes. If at anytime an Applicant or other person would like to engage the Department in an ADR procedure, the person may send a proposal to the Department's Dispute Resolution Coordinator. For additional information on the Department's ADR Policy, see the Department's General Administrative Rule on ADR at 10 TAC §1.17.

f) An Applicant may appeal decisions made by staff in accordance with 10 TAC §1.7.

9) Application Submission

a) All applications submitted under this NOFA must be received on or before 5:00 p.m. on May 1, 2008. The Department will accept applications from 8 a.m. to 5 p.m. each business day, excluding federal and state holidays from the date this NOFA is published on the Department's web site until the deadline. For questions regarding this NOFA please contact Barbara Skinner at (512) 475-1643 or via e-mail at barbara.skinner@tdhca.state.tx.us or Ann Gusman-MacBeth at (512) 475-4606 or via e-mail at ann.macbeth@tdhca.state.tx.us.

b) If an Application is submitted to the Department for a Development that requests funds from two separate housing finance programs, and only one of the housing finance programs is operated as a competitive cycle, the Application will be handled in accordance with the guidelines for each housing program. The Applicant is responsible for adhering to the deadlines and requirements of both programs. If an Application is submitted for two separate housing finance programs where both programs are either open cycle, or competitive, the Application will be handled in accordance with the guidelines of each housing program. The Applicant is responsible for adhering to the deadlines and requirements of both programs.

c) All applications must be submitted, and provide all documentation, as described in this NOFA and associated application materials.

d) Applicants must submit two complete printed copies of all Application materials as detailed in the 2007 ASPM for Housing Trust Fund.

e) The application consists of three parts: bound items, unbound items and electronic submission. A complete application for each proposed development must be submitted. Incomplete applications or improperly bound applications will not be accepted. The bound volumes of the application must be bound using red pressboard binders. Each volume must be submitted in a separate red pressboard binder. If the required documentation for a volume exceeds the capacity of one binder, a second binder may be used to subdivide the volume.

f) If third party reports are not received at the time of application submission, the Application will be terminated.

g) All Application materials including manuals, NOFA, program guidelines, and all applicable Housing Trust Fund rules, will be available on the Department's website at www.tdhca.state.tx.us. Applications will be required to adhere to the Housing Trust Fund Rule and threshold requirements in effect at the time of the Application submission. Applications must be on forms provided by the Department, and cannot be altered or modified and must be in final form before submitting them to the Department.

h) Applicants are required to remit a non-refundable Application fee payable to the Texas Department of Housing and Community Affairs in the amount of $200.00 per Application. Payment must be in the form of a check, cashier's check or money order. Do not send cash. Section 2306.147(b) of the Texas Government Code requires the Department to waive Application fees for nonprofit organizations that offer expanded services such as child care, nutrition programs, job training assistance, health services, or human services. These organizations must include proof of their exempt status and a description of their supportive services in lieu of the Application fee.

i) Applications must be sent via overnight delivery to:

HOME Division

Texas Department of Housing and Community Affairs

Attn: Barbara Skinner

221 East 11th Street

Austin, TX 78701-2410

or via the U.S. Postal Service to:

HOME Division

Texas Department of Housing and Community Affairs

Attn: Barbara Skinner

Post Office Box 13941

Austin, TX 78711-3941

NOTE: This NOFA does not include the text of the various applicable regulatory provisions that may be important to the particular Housing Trust Fund Rental Production Program. For proper completion of the application, the Department strongly encourages potential applicants to review all applicable State and Federal regulations.

TRD-200704926

Michael Gerber
Executive Director
Texas Department of Housing and Community Affairs
Filed: October 17, 2007

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HOME Investment Partnerships Program RHD Open Cycle Notice of Funding Availability

Rental Housing Development Program

1) Summary

a) The Texas Department of Housing and Community Affairs ("the Department") announces the availability of approximately $15,000,000 in funding from the HOME Investment Partnerships Program for the development of affordable rental housing for low-income Texans. The availability and use of these funds is subject to the State HOME Rules at Title 10 Texas Administrative Code (10 TAC) Chapter 53 ("HOME Rules") in effect at the time application is submitted, the Federal HOME regulations governing the HOME program (24 CFR Part 92), and Chapter 2306, Texas Government Code. Other Federal regulations may also apply such as, but not limited to, 24 CFR Parts 50 and 58 for environmental requirements, Davis-Bacon Act for labor standards, 24 CFR §85.36 and §84.42 for conflict of interest and 24 CFR Part 5, Subpart A for fair housing. Applicants are encouraged to familiarize themselves with all of the applicable state and federal rules that govern the program.

2) Allocation of HOME Funds

a) These funds are made available through unawarded and deobligated HOME funds that are set-aside for rental housing development proposals which involve new construction, rehabilitation, acquisition and rehabilitation of affordable rental housing development activities. All funds released under this NOFA are to be used for the creation of affordable rental housing for low-income Texans earning 80 percent or less of the Area Median Family Income (AMFI).

b) A rental application may be submitted in a PJ if the HOME units requested are serving persons with disabilities; however the submission will not be processed, reviewed or potentially recommended to the Board unless there are a balance of uncommitted funds available from the 5% PJ funds.

c) In accordance with 10 TAC §53.58, this NOFA will be an Open Application Cycle and funding will be available on a first-come, first-served Statewide basis. Applications will be accepted until 5:00 p.m. June 2, 2008 unless all funds are committed prior to this date. Applicants are encouraged to review the application process cited above and described herein. Applications that do not meet minimum threshold and financial feasibility will not be considered for funding.

d) The Department awards HOME funds, typically as a loan, to eligible recipients for the provision of housing for low, very low and extremely low-income individuals and families, pursuant to 10 TAC §53.54(2). Award amounts are limited to no more than $3 million per development. The minimum HOME award may not be less than $1,000 per HOME assisted unit. The maximum award may not exceed 90% of the total development costs. The remaining 10% of total development cost must be in the form of loans or grants from private or public entities. The per-unit subsidy may not exceed the per-unit dollar limits established by the United States Department of Housing and Urban Development (HUD) under §221(d)(3) of the National Housing Act which are applicable to the area in which the development is located, and as published by HUD. The Department's underwriting guidelines in 10 TAC §1.32 will be used which set as a minimum feasibility a 1.15 debt coverage ratio. Where the anticipated debt coverage ratio in the year after completion exceeds 1.35, a loan or partial loan will be recommended.

e) Developments involving rehabilitation must establish that the rehabilitation will substantially improve the condition of the housing and will involve at least $12,000 per unit in direct hard costs, unless the property is also being financed by the United States Department of Agriculture's Rural Development program. When HOME funds are used for a rehabilitation development the entire unit must be brought up to the applicable property standards, pursuant to 24 CFR §92.251(a)(1).

3) Eligible and Ineligible Activities

a) Eligible activities will include those permissible under the federal HOME Rule at 24 CFR §92.205, the State HOME Rules at 10 TAC §53.53(g), which involve only the acquisition, rehabilitation and construction of affordable rental developments.

b) Prohibited activities include those under federal HOME rules at 24 CFR §92.214 and 10 TAC §53.56.

c) Rental development funds will not be eligible for use in a Participating Jurisdiction (PJ).

d) Refinancing of federally financed properties or use of HOME funds for properties constructed within five years of the submission of an Application for assistance will not be permissible.

4) Eligible and Ineligible Applicants

a) The Department provides HOME funding to qualified nonprofit organizations, for-profit entities, sole proprietors, public housing authorities and units of general local government.

b) Applicants may be ineligible for funding if they meet any of the criteria listed in §53.53(b) of the Department's HOME rule, clarification for §53.53(b)(6) creates ineligibility with any requirements under 10 TAC §49.5(a) excluding paragraphs (5) - (8). Applicants are encouraged to familiarize themselves with the Department's certification and debarment policies prior to application submission.

5) Matching Funds

a) Applicants will be required to submit documentation on all financial resources to be used in the development that may be considered match to the Department's federal HOME requirements. Applicants must provide firm commitments as defined in accordance with the Federal HOME rules at 24 CFR §92.218 and the Department's Match Guide and will be provided with the appropriate forms and instructions on how to report eligible match.

6) Affordability Requirements

a) Applicants should be aware that there are minimum affordability standards necessary for HOME assisted rental developments. Initial occupancy income restrictions require that at least 90% of the units are affordable to persons below 60% AMFI and that 20% of the units are affordable to person below 50% AMFI. Over the remaining affordability period at least 20% of HOME assisted units should be affordable to persons earning 50% or less than the AMFI, all remaining units must be affordable to persons earning 80% or less than the AMFI.

b) Each development will have a two-tier affordability term.

i) The first tier will entail the federally required affordability term. For new construction or acquisition of new housing, this term is 20 years. For rehabilitation or acquisition of existing housing, the term is 5 years if the HOME investment is less than $15,000 per unit; 10 years if the HOME investment is $15,000 to $40,000 per unit; and 15 years if the HOME investment is greater than $40,000 per unit. This first tier is subject to all federal laws and regulations regarding HOME requirements, recapture, net proceeds and affordability.

ii) The second tier of affordability is the additional number of years required to bring the total term of affordability up to 30 years or the term of the loan agreement. For example, the second tier of affordability on a 10-year federal affordability term is 20 additional years. The second tier, or remaining term, is subject only to state regulations and affordability requirements.

c) Properties will be restricted under a Land Use Restriction Agreement ("LURA"), or other such instrument as determined by the Department for these terms. Among other restrictions, the LURA may require the owner of the property to continue to accept subsidies which may be offered by the federal government, prohibit the owner from exercising an option to prepay a federally insured loan, impose tenant income-based occupancy and rental restrictions, or impose any of these and other restrictions as deemed necessary at the sole discretion of the Department in order to preserve the property as affordable housing on a case-by-case basis.

7) Site and Development Restrictions

a) Pursuant to 24 CFR §92.251, housing that is constructed or rehabilitated with HOME funds must meet all applicable local codes, rehabilitation standards, ordinances, and zoning ordinances at the time of project completion. In the absence of a local code for new construction or rehabilitation, HOME-assisted new construction or rehabilitation must meet, as applicable, one of three model codes: Uniform Building Code (ICBO), National Building Code (BOCA), Standard (Southern) Building Code (SBCCI); or the Council of American Building Officials (CABO) one or two family code; or the Minimum Property Standards (MPS) in 24 CFR §200.925 or §200.926d. To avoid duplicative inspections when Federal Housing Administration (FHA) financing is involved in a HOME-assisted property, a participating jurisdiction may rely on a Minimum Property Standards (MPS) inspection performed by a qualified person. Newly constructed housing must meet the current edition of the Model Energy Code published by the Council of American Building Officials.

b) All other HOME-assisted housing (e.g., acquisition) must meet all applicable State and local housing quality standards and code requirements and if there are no such standards or code requirements, the housing must meet the housing quality standards in 24 CFR §982.401. When HOME funds are used for a rehabilitation development the entire unit must be brought up to the applicable property standards, pursuant to 24 CFR §92.251(a)(1).

c) Housing must meet the accessibility requirements at 24 CFR Part 8, which implements Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and covered multifamily dwellings, as defined at 24 CFR §100.201, must also meet the design and construction requirements at 24 CFR §100.205, which implement the Fair Housing Act (42 U.S.C. §§3601 - 3619). Additionally, pursuant to the 2007 Qualified Allocation Plan (QAP), 10 TAC §49.9(h)(4)(G), Developments involving New Construction (excluding New Construction of nonresidential buildings) where some Units are two-stories and are normally exempt from Fair Housing accessibility requirements, a minimum of 20% of each Unit type (i.e. one bedroom, two bedroom, three bedroom) must provide an accessible entry level and all common-use facilities in compliance with the Fair Housing Guidelines, and include a minimum of one bedroom and one bathroom or powder room at the entry level. A certification will be required after the Development is completed from an inspector, architect, or accessibility specialist. Any Developments designed as single family structures must also satisfy the requirements of §2306.514, Texas Government Code.

d) All of the 2007 Qualified Allocation Plan and Rules 10 TAC §49.6, excluding subsections (d), (f), (g) and (h) apply.

e) Developments involving new construction will be limited to 252 Units. These maximum Unit limitations also apply to those Developments which involve a combination of rehabilitation and new construction. Developments that consist solely of acquisition/rehabilitation or rehabilitation only may exceed the maximum Unit restrictions. The minimum number of units shall be 4 units, pursuant to 10 TAC §53.53(f).

8) Threshold Criteria

a) Housing units subsidized by HOME funds must be affordable to low, very-low or extremely low-income persons. Mixed Income rental developments may only receive funds for units that meet the HOME program affordability standards. All applications intended to serve persons with disabilities must adhere to the Department's Integrated Housing Rule at 10 TAC §1.15.

b) For funds being used for Rental Housing Developments, the Recipient must establish a reserve account consistent with §2306.186, Texas Government Code, and as further described in 10 TAC §1.37, pursuant to 10 TAC §53.53(i).

c) All applications will be required to meet Section 8 Housing Quality Standards detailed under 24 CFR §982.401, Texas Minimum Construction Standards, as well as the Fair Housing Accessibility Standards and Section 504 of the Rehabilitation Act of 1973. Developments must also meet all local building codes or standards that may apply. If the development is located within a jurisdiction that does not have building codes, developments must meet the most current International Building Code.

d) Pursuant to 10 TAC §53.53(j), Applicants for Rental Development activities will be required to provide written notification to each of the following persons or entities 14 days prior to the submission of any application package. Failure to provide written notifications 14 days prior to the submission of an application package at a minimum will cause an application to be terminated under competitive application cycles. Applicants must provide notifications to:

i) the executive officer and elected members of the governing board of the community where the development will be located. This includes municipal governing boards, city councils, and County governing boards;

ii) all neighborhood organizations whose defined boundaries include the location of the Development;

iii) executive officer and Board President of the school district that covers the location of the Development;

iv) residents of occupied housing units that may be rehabilitated, reconstructed or demolished; and

v) the State Representative and State Senator whose district covers the location of the Development.

vi) the notification letter must include, but not be limited to, the address of the development site, the number of units to be built or rehabilitated, the proposed rent and income levels to be served, and all other details required of the NOFA and Application Manual.

e) The following Threshold Criteria listed in this subsection are mandatory requirements at the time of Application submission unless specifically indicated otherwise:

i) An applicant shall provide certification that no person or entity that would benefit from the award of HOME funds has provided a source of match or has satisfied the Applicant's cash reserve obligation or made promises in connection therewith, pursuant to 10 TAC §53.53(k).

ii) All contractors, consulting firms, and Administrators must sign and submit an affidavit with each draw to attest that each request for payment of HOME funds is for the actual cost of providing a service and that the service does not violate any conflict of interest provisions, pursuant to 10 TAC §53.53(l).

iii) To encourage the inclusion of families and individuals with the highest need for affordable housing, applicants must target a minimum of 5% of the total units for individuals or families earning 30% or less of area medium income for the development site.

iv) To encourage the involvement of other public agencies and private entities in affordable housing, applicants must provide a minimum of 10% of the total development cost from other public agencies and/or private entities.

v) To encourage reasonable and cost effective building strategies, applicants must limit development cost per square foot to $70.00 for new construction and $38.00 for rehabilitation. Please note, use normal rounding when performing this calculation. ($69.50 and higher would be rounded up to $70.00, $69.49 and lower would be rounded down to $69.00).

vi) All of the 2007 Qualified Allocation Plan and Rules at 10 TAC §49.9(h), excluding paragraphs (4)(I), (11), (12) and (15).

vii) An applicant is not eligible to apply for funds or any other assistance from the Department unless audits are current at the time of application or the Audit Certification Form has been submitted to the Department in a satisfactory format on or before the application deadline for funds or other assistance per 10 TAC §1.3(b).

9) Review Process

a) Pursuant to 10 TAC §53.58, each application will be handled on a first-come, first-served basis as further described in this section. Each application will be assigned a "received date" based on the date and time it is physically received by the Department. Then each application will be reviewed on its own merits in three review phases, as applicable. Applications will continue to be prioritized for funding based on their "received date" unless they do not proceed into the next phase(s) of review. Applications proceeding in a timely fashion through a phase will take priority over applications that may have an earlier "received date" but that did not timely complete a phase of review. Applications will be reviewed for Applicant and Activity Eligibility, Threshold Criteria, and Financial Feasibility as described in this NOFA.

b) Pursuant to the QAP 10 TAC §49.5(a)(9) if a submitted Application has an entire Volume of the application missing; has excessive omissions of documentation from the Threshold Criteria or Uniform Application documentation; or is so unclear, disjointed or incomplete that a thorough review cannot reasonably be performed by the Department, as determined by the Department. If an application is determined ineligible pursuant to this section, the Application will be terminated without being processed as an Administrative Deficiency.

Phase One will begin as of the received date. Applications not being considered under the CHDO Set-Aside will be passed through to Phase Two upon receipt. Phase One will only entail the review of the CHDO Certification package. The Department will ensure review of these materials and issue notice of any deficiencies on the CHDO Certification package within 30 days of the received date. Applicants who are able to resolve their deficiencies within seven business days will be forwarded into Phase Two and will continue to be prioritized by their received date. Applications with deficiencies not cured within seven business days, will be retained in Phase One until all deficiencies have been addressed/resolved by the Applicant to the Department's satisfaction. Only upon satisfaction of all deficiencies will the Application be forwarded to Phase Two. Applications that have not proceeded out of Phase One within 50 days of the received date will be terminated and must reapply for consideration of funds.

Phase Two will include a review of all application requirements. The Department will ensure review of materials required under the NOFA, and application guidelines and will issue notice of any deficiencies as to threshold and eligibility within 45 days of the date it enters Phase Two. Applicants who are able to resolve their deficiencies within seven business days will be forwarded into Phase Three and will continue to be prioritized by their received date. Applications with deficiencies not cured within seven business days, will be retained in Phase Two until all deficiencies have been addressed/resolved by the Applicant to the Department's satisfaction. Only upon satisfaction of all deficiencies, and of threshold and eligibility requirements will the Application be forwarded to Phase Three. An Application that has not proceeded out of Phase Two within 65 days of the date it entered Phase Two will be terminated and must reapply for consideration of funds. Application submitted for non-development Activities will not go through a Phase Three evaluation.

Phase Three will include a comprehensive review for material noncompliance and financial feasibility by the Department. Financial feasibility reviews will be conducted by the Real Estate Analysis (REA) Division consistent with 10 TAC §1.32. REA will create an underwriting report identifying staff's recommended loan terms, the loan or grant amount and any conditions to be placed on the development. The Department will ensure financial feasibility review and issue notice of any required deficiencies for that feasibility review within 45 days of the date it enters Phase Three. Applicants who are able to resolve their deficiencies within seven business days will be forwarded into "Recommended Status" and will continue to be prioritized by their received date. Applications with deficiencies not satisfied within seven business days, will be retained in Phase Three until all deficiencies have been addressed/resolved by the Applicant to the Department's satisfaction. Only upon resolution of all deficiencies will the Application be forwarded to the Department's Executive Awards Review and Advisory Committee for recommendation to the Board. Any application that has not finished Phase Three within 65 days of the date it entered Phase Three will be terminated and must reapply for consideration of funds.

Upon completion of the applicable final review Phase, applications will be presented to the Executive Awards Review and Advisory Committee (the Committee). If satisfactory, the Committee will then recommend the award of funds to the Board, as long as HOME funds are still available for this Activity under the applicable NOFA. If the Application is recommended at least 14 days prior to the next Board meeting, it will be placed on the next Board meeting's agenda. If the Application is recommended with less than 14 days before the next Board meeting, the recommendation will be placed on the subsequent month's Board meeting agenda. Applications which are not recommended by the committee will be either returned to Department Staff or terminated.

Because applications are processed in the order they are received by the Department, it is possible that the Department will expend all available HOME funds before an application has completed all phases of its review. In the case that all HOME funds are committed before an application has completed all phases of the review process, the Department will notify the applicant that their application will remain active for 90 days in its current phase. If new HOME funds become available, applications will continue onward with their review without losing their received date priority. If HOME funds do not become available within 90 days of the notification, the Applicant will be notified that their application is no longer under consideration. The applicant must reapply to be considered for future funding. If on the date an application is received by the Department, no funds are available under this NOFA, the

applicant will be notified that no funds exist under the NOFA and the application will not be processed.

c) Pursuant to 10 TAC §53.59(3), a site visit will be conducted as part of the HOME Program development feasibility review. Applicants must receive recommendation for approval from the Department to be considered for HOME funding by the Board.

d) The Department may decline to consider any Application if the proposed activities do not, in the Department's sole determination, represent a prudent use of the Department's funds. The Department is not obligated to proceed with any action pertaining to any Applications which are received, and may decide it is in the Department's best interest to refrain from pursuing any selection process. The Department strives, through its loan terms, to securitize its funding while ensuring the financial feasibility of a Development. The Department reserves the right to negotiate individual elements of any Application.

e) In accordance with §2306.082 Texas Government Code and 10 TAC §53.58(d), it is the Department's policy to encourage the use of appropriate Alternative Dispute Resolution procedures ("ADR") under the Governmental Dispute Resolution Act, Chapter 2009, Texas Government Code, to assist in resolving disputes under the Department's jurisdiction. As described in Chapter 154, Civil Practices and Remedies Code, ADR procedures include mediation. Except as prohibited by the Department's ex parte communications policy, the Department encourages informal communications between Department staff and Applicants, and other interested persons, to exchange information and informally resolve disputes. The Department also has administrative appeals processes to fairly and expeditiously resolve disputes. If at anytime an Applicant or other person would like to engage the Department in an ADR procedure, the person may send a proposal to the Department's Dispute Resolution Coordinator. For additional information on the Department's ADR Policy, see the Department's General Administrative Rule on ADR at 10 TAC §1.17.

f) An Applicant may appeal decisions made by staff in accordance with 10 TAC §1.7.

10) Application Submission

a) All applications submitted under this NOFA must be received on or before 5:00 p.m. on June 2, 2008. The Department will accept applications from 8 a.m. to 5 p.m. each business day, excluding federal and state holidays from the date this NOFA is published on the Department's web site until the deadline. For questions regarding this NOFA please contact Barbara Skinner at (512) 475-1643 or via e-mail at barbara.skinner@tdhca.state.tx.us or Skip Beaird at (512) 475-0908 or via e-mail at skip.beaird@tdhca.state.tx.us.

b) All applications must be submitted, and provide all documentation, as described in this NOFA and associated application materials.

c) Applicants must submit one complete printed copy of all Application materials and one complete scanned copy of the Application materials as detailed in the 2007 Final ASPM. All scanned copies must be scanned in accordance with the guidance provided in the 2007 Final ASPM.

d) The application consists of three parts: bound items, unbound items and electronic submission. A complete application for each proposed development must be submitted. Incomplete applications or improperly bound applications will not be accepted. The bound volumes of the application must be bound using red pressboard binders. Each volume must be submitted in a separate red pressboard binder. If the required documentation for a volume exceeds the capacity of one binder, a second binder may be used to subdivide the volume. Applicants must submit one complete printed copy of all application materials and one complete scanned copy stored on compact disc of the application materials as detailed in the 2007 Final ASPM. All scanned copies must be scanned in accordance with the guidance provided in the 2007 Final ASPM.

e) Third party reports - If third party reports are not received at the time of application submission, the Application will be terminated.

f) All Application materials including manuals, NOFA, program guidelines, and all applicable HOME rules, will be available on the Department's website at www.tdhca.state.tx.us. Applications will be required to adhere to the HOME Rule and threshold requirements in effect at the time of the Application submission. Applications must be on forms provided by the Department, and cannot be altered or modified and must be in final form before submitting them to the Department.

g) Applicants are required to remit a non-refundable Application fee payable to the Texas Department of Housing and Community Affairs in the amount of $500.00 per Application. Payment must be in the form of a check, cashier's check or money order. Do not send cash. Section 2306.147(b) of the Texas Government Code requires the Department to waive Application fees for nonprofit organizations that offer expanded services such as child care, nutrition programs, job training assistance, health services, or human services. These organizations must include proof of their exempt status and a description of their supportive services in lieu of the Application fee. The Application fee is not an allowable or reimbursable cost under the HOME Program.

h) Applications must be sent via overnight delivery to:

HOME Division

Texas Department of Housing and Community Affairs

Attn: Barbara Skinner

221 East 11th Street

Austin, TX 78701-2410

or via the U.S. Postal Service to:

HOME Division

Texas Department of Housing and Community Affairs

Attn: Barbara Skinner

Post Office Box 13941

Austin, TX 78711-3941

NOTE: This NOFA does not include the text of the various applicable regulatory provisions that may be important to the particular HOME Rental Housing Development Program. For proper completion of the application, the Department strongly encourages potential applicants to review all applicable State and Federal regulations.

TRD-200704927
Michael Gerber
Executive Director
Texas Department of Housing and Community Affairs
Filed: October 17, 2007

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Texas Department of Insurance

Company Licensing

Application to change the name of NIPPONKOA INSURANCE COMPANY OF AMERICA to AMERICAN PET INSURANCE COMPANY, INC., a foreign fire and/or casualty company. The home office is in Mountlake Terrace, Washington.

Application for incorporation to the State of Texas by STARR SPECIALTY LINES INSURANCE COMPANY, a domestic fire and/or casualty company. The home office is in Houston, Texas.

Application to change the name of REPUBLIC INSURANCE COMPANY to STARR INDEMNITY & LIABILITY COMPANY, a domestic fire and/or casualty company. The home office is in Dallas, Texas.

Application to change the name of PACIFIC PROPERTY & CASUALTY INSURANCE COMPANY to PACIFIC SPECIALTY PROPERTY AND CASUALTY COMPANY, a domestic fire and/or casualty company. The home office is in Austin, Texas.

Any objections must be filed with the Texas Department of Insurance, within twenty (20) calendar days from the date of the *Texas Register* publication, addressed to the attention of Godwin Ohaechesi, 333 Guadalupe Street, M/C 305-2C, Austin, Texas 78701.

TRD-200704918
Gene C. Jarmon
Chief Clerk and General Counsel
Texas Department of Insurance
Filed: October 16, 2007

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Third Party Administrator Applications

The following third party administrator (TPA) applications have been filed with the Texas Department of Insurance and are under consideration.

Application of ALICARE, INC., a foreign third party administrator. The home office is NEW YORK, NEW YORK.

Application of BENTLEY, YATES COBRA SERV, INC., a domestic third party administrator. The home office is RICHARDSON, TEXAS.

Application of TEXAS EDUCATOR BENEFITS INC., (using the assumed name of COMPLETE BENEFIT SERVICES), a domestic third party administrator. The home office is SAN ANTONIO, TEXAS.

Application of VERIDIGN HEALTH SOLUTIONS, LLC., a foreign third party administrator. The home office is PHILADELPHIA, PENNSYLVANIA.

Any objections must be filed within 20 days after this notice is published in the *Texas Register*, addressed to the attention of Matt Ray, MC 107-1A, 333 Guadalupe, Austin, Texas 78701.

TRD-200704941
Gene C. Jarmon
Chief Clerk and General Counsel
Texas Department of Insurance
Filed: October 17, 2007

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Texas Lottery Commission

Instant Game Number 1025 "Groovy 8's"

1.0 Name and Style of Game.

A. The name of Instant Game No. 1025 is "GROOVY 8'S". The play style is "key number match with doubler."

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 1025 shall be $1.00 per ticket.

1.2 Definitions in Instant Game No. 1025.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - The printed data under the latex on the front of the instant ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black play symbols are: 1, 2, 3, 4, 5, 6, 7, 9, 10, 8 SYMBOL, $1.00, $2.00, $4.00, $5.00, $8.00, $10.00, $18.00, $20.00, $48.00, $100 and $1,000.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 1025 - 1.2D

PLAY SYMBOL	CAPTION
1	ONE
2	TWO
3	THR
4	FOR
5	FIV
6	SIX
7	SVN
9	NIN
10	TEN
8 SYMBOL	DBL
$1.00	ONE$
$2.00	TWO$
$4.00	FOUR$
$5.00	FIVE$
$8.00	EIGHT$
$10.00	TEN$
$18.00	EGHTN
$20.00	TWENTY
$48.00	FTY EGT
$100	ONE HUND
$1,000	ONE THOU

E. Retailer Validation Code - Three (3) letters found under the removable scratch-off covering in the play area, which retailers use to verify and validate instant winners. These three (3) small letters are for validation purposes and cannot be used to play the game. The possible validation codes are:

Figure 2: GAME NO. 1025 - 1.2E

CODE	PRIZE
ONE	$1.00
TWO	$2.00
FOR	$4.00
FIV	$5.00
EGT	$8.00
EHT	$18.00

Low-tier winning tickets use the required codes listed in Figure 2. Non-winning tickets and high-tier tickets use a non-required combination of the required codes listed in Figure 2 with the exception of ∅, which will only appear on low-tier winners and will always have a slash through it.

F. Serial Number - A unique 13 (thirteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There is a boxed four (4) digit Security Number placed randomly within the Serial Number. The remaining nine (9) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 0000000000000.

G. Low-Tier Prize - A prize of $1.00, $2.00, $4.00, $5.00, $8.00 or $18.00.

H. Mid-Tier Prize - A prize of $48.00 or $100.

I. High-Tier Prize - A prize of $1,000.

J. Bar Code - A 22 (twenty-two) character interleaved two (2) of five (5) bar code which will include a three (3) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the nine

(9) digit Validation Number. The bar code appears on the back of the ticket.

K. Pack-Ticket Number - A 13 (thirteen) digit number consisting of the three (3) digit game number (1025), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001 and end with 150 within each pack. The format will be: 1025-0000001-001.

L. Pack - A pack of "GROOVY 8'S" Instant Game tickets contains 150 tickets, packed in plastic shrink-wrapping and fanfolded in pages of five (5). Tickets 001 to 005 will be on the top page; tickets 006 to 010 on the next page; etc.; and tickets 146 to 150 will be on the last page with backs exposed. Ticket 001 will be folded over so the front of ticket 001 and 010 will be exposed.

M. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

N. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "GROOVY 8'S" Instant Game No. 1025 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule 401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner in the "GROOVY 8'S" Instant Game is determined once the latex on the ticket is scratched off to expose 9 (nine) Play Symbols. If a player matches any of YOUR NUMBERS play symbols to the WINNING NUMBER play symbol, the player wins prize shown for that number. If a player reveals an "8" play symbol, the player wins DOUBLE the prize shown for that number. No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 9 (nine) Play Symbols must appear under the latex overprint on the front portion of the ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink except for dual image games;

5. The ticket shall be intact;

6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;

8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The ticket must not be counterfeit in whole or in part;

10. The ticket must have been issued by the Texas Lottery in an authorized manner;

11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;

13. The ticket must be complete and not miscut, and have exactly 9 (nine) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;

14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;

15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 9 (nine) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 9 (nine) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive non-winning tickets will not have identical play data, spot for spot.

B. No duplicate non-winning prize symbols on a ticket.

C. No duplicate non-winning YOUR NUMBERS on a ticket.

D. Non-winning prize symbols will never be the same as a winning prize symbol.

E. The top prize will appear on every ticket unless otherwise restricted by the prize structure.

F. The "8" (doubler) play symbol will only appear as dictated by the prize structure.

2.3 Procedure for Claiming Prizes.

A. To claim a "GROOVY 8'S" Instant Game prize of $1.00, $2.00, $4.00, $5.00, $8.00, $18.00, $48.00 or $100, a claimant shall sign the

back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not, in some cases, required to pay a $48.00 or $100 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "GROOVY 8'S" Instant Game prize of $1,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of $600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "GROOVY 8'S" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;

2. delinquent in making child support payments administered or collected by the Attorney General;

3. delinquent in reimbursing the Texas Health and Human Services Commission for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resources Code;

4. in default on a loan made under Chapter 52, Education Code; or

5. in default on a loan guaranteed under Chapter 57, Education Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than $600 from the "GROOVY 8'S" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than $600 from the "GROOVY 8'S" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code Section 466.408. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed. An Instant Game ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 10,080,000 tickets in the Instant Game No. 1025. The approximate number and value of prizes in the game are as follows:

Figure 3: GAME NO. 1025 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
$1	1,209,600	8.33
$2	470,400	21.43
$4	235,200	42.86
$5	50,400	200.00
$8	84,000	120.00
$18	67,200	150.00
$48	9,240	1,090.91
$100	1,680	6,000.00
$1,000	210	48,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.
**The overall odds of winning a prize are 1 in 4.74. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 1025 without advance notice, at which point no further tickets in that game may be sold.

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 1025, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401, and all final decisions of the Executive Director.

TRD-200704855
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: October 11, 2007

♦ ♦ ♦

Public Utility Commission of Texas

Announcement of Application for an Amendment to a State-Issued Certificate of Franchise Authority

The Public Utility Commission of Texas received an application on October 10, 2007, for an amendment to a state-issued certificate of franchise authority (CFA), pursuant to §§66.001 - 66.016 of the Public Utility Regulatory Act (PURA).

Project Title and Number: Application of GTE Southwest,Incorporated, doing business as Verizon Southwest, to Amend a State-Issued Certificate of Franchise Authority, Project Number 34894 before the Public Utility Commission of Texas.

Information on the application may be obtained by contacting the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All inquiries should reference Project Number 34894.

TRD-200704900
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: October 15, 2007

♦ ♦ ♦

Announcement of Application for an Amendment to a State-Issued Certificate of Franchise Authority

The Public Utility Commission of Texas received an application on October 10, 2007, for an amendment to a state-issued certificate of franchise authority (CFA), pursuant to §§66.001 - 66.016 of the Public Utility Regulatory Act (PURA).

Project Title and Number: Application of NTS Communications, Inc. to Amend a State-Issued Certificate of Franchise Authority, Project Number 34898 before the Public Utility Commission of Texas.

Information on the application may be obtained by contacting the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All inquiries should reference Project Number 34898.

TRD-200704902
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: October 15, 2007

♦ ♦ ♦

Announcement of Application for an Amendment to a State-Issued Certificate of Franchise Authority

The Public Utility Commission of Texas received an application on October 10, 2007, for an amendment to a state-issued certificate of franchise authority (CFA), pursuant to §§66.001 - 66.016 of the Public Utility Regulatory Act (PURA).

Project Title and Number: Application of NTS Telephone Company, LLC, doing business as NTS of Levelland, to Amend a State-Issued Certificate of Franchise Authority, Project Number 34899 before the Public Utility Commission of Texas.

Information on the application may be obtained by contacting the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All inquiries should reference Project Number 34899.

TRD-200704903
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: October 15, 2007

♦ ♦ ♦

Announcement of Application for an Amendment to a State-Issued Certificate of Franchise Authority

The Public Utility Commission of Texas received an application on October 11, 2007, for an amendment to a state-issued certificate of franchise authority (CFA), pursuant to §§66.001 - 66.016 of the Public Utility Regulatory Act (PURA).

Project Title and Number: Application of Cequel III Communications I, LLC, doing business as Suddenlink Communications, for An Amendment to a State-Issued Certificate of Franchise Authority, Project Number 34903 before the Public Utility Commission of Texas.

Information on the application may be obtained by contacting the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All inquiries should reference Project Number 34903.

TRD-200704917
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: October 16, 2007

♦ ♦ ♦

Announcement of Application for an Amendment to a State-Issued Certificate of Franchise Authority

The Public Utility Commission of Texas received an application on October 12, 2007, for an amendment to a state-issued certificate of franchise authority (CFA), pursuant to §§66.001 - 66.016 of the Public Utility Regulatory Act (PURA).

Project Title and Number: Application of Marcus Cable Associates, LLC, doing business as Charter Communications, to Amend a State-Issued Certificate of Franchise Authority, Project Number 34907 before the Public Utility Commission of Texas.

Information on the application may be obtained by contacting the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All inquiries should reference Project Number 34907.

TRD-200704915
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: October 16, 2007

♦ ♦ ♦

Notice of Application for a Certificate to Provide Retail Electric Service

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on October 9, 2007, for retail electric provider (REP) certification, pursuant to §§39.101 - 39.109 of the Public Utility Regulatory Act (PURA).

Docket Title and Number: Application of TexRep2, LLC for Retail Electric Provider (REP) Certification, Docket Number 34885 before the Public Utility Commission of Texas.

Applicant's requested service area by geography includes the geographic area of the Electric Reliability Council of Texas.

Persons wishing to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than November 2, 2007. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 34885.

TRD-200704862
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: October 12, 2007

♦ ♦ ♦

Notice of Application for a Certificate to Provide Retail Electric Service

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on October 9, 2007, for retail electric provider (REP) certification, pursuant to §§39.101 - 39.109 of the Public Utility Regulatory Act (PURA).

Docket Title and Number: Application of ESCO1, LLC for Retail Electric Provider (REP) Certification, Docket Number 34886 before the Public Utility Commission of Texas.

Applicant's requested service area by geography includes the geographic area of the Electric Reliability Council of Texas.

Persons wishing to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than November 2, 2007. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 34886.

TRD-200704861

Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: October 12, 2007

♦ ♦ ♦

Notice of Application for Amendment to Service Provider Certificate of Operating Authority

On October 10, 2007, McLeodUSA Telecommunications Services, Inc. filed an application with the Public Utility Commission of Texas (commission) to amend its service provider certificate of operating authority (SPCOA) granted in SPCOA Certificate Number 60078. Applicant intends to reflect a change in ownership/control to PAETEC Holding Corp.

The Application: Application of McLeodUSA Telecommunications Services, Inc. for an Amendment to its Service Provider Certificate of Operating Authority, Docket Number 34893.

Persons wishing to comment on the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than October 31, 2007. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 34893.

TRD-200704899
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: October 15, 2007

♦ ♦ ♦

Notice of Application for Amendment to Service Provider Certificate of Operating Authority

On October 10, 2007, NTS Communications, Inc. filed an application with the Public Utility Commission of Texas (commission) to amend its service provider certificate of operating authority (SPCOA) granted in SPCOA Certificate Number 60044. Applicant intends to reflect a change in ownership/control to Xfone, Inc.

The Application: Application of NTS Communications, Inc. for an Amendment to its Service Provider Certificate of Operating Authority, Docket Number 34896.

Persons wishing to comment on the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than October 31, 2007. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 34896.

TRD-200704901
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: October 15, 2007

♦ ♦ ♦

Notice of Application for Amendment to Service Provider Certificate of Operating Authority

On October 10, 2007, NTS Telephone Company, LLC, doing business as NTS of Levelland, filed an application with the Public Utility Commission of Texas (commission) to amend its service provider certificate of operating authority (SPCOA) granted in SPCOA Certificate Number 60778. Applicant intends to reflect a change in ownership/control to Xfone, Inc.

The Application: Application of NTS Telephone Company, LLC, doing business as NTS of Levelland, for an Amendment to its Service Provider Certificate of Operating Authority, Docket Number 34897.

Persons wishing to comment on the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than October 31, 2007. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 34897.

TRD-200704919
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: October 16, 2007

♦ ♦ ♦

Notice of Application for Amendments to Service Provider Certificates of Operating Authority

On October 8, 2007, American Fiber Network, Inc., and CloseCall America, Inc. filed an application with the Public Utility Commission of Texas (commission) to amend their service provider certificates of operating authority (SPCOA) numbers 60444 and 60741. The applicants intend to reflect a change in ownership/control.

The Application: Application of American Fiber Network, Inc., and CloseCall America, Inc. for Amendments to Their Service Provider Certificates of Operating Authority, Docket Number 34878.

Persons wishing to comment on the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas, 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than October 31, 2007. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 34878.

TRD-200704863
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: October 12, 2007

♦ ♦ ♦

Notice of Application for Relinquishment of a Service Provider Certificate of Operating Authority

On October 10, 2007, Centramedia Online Services filed an application with the Public Utility Commission of Texas (commission) to relinquish its service provider certificate of operating authority (SPCOA) granted in SPCOA Certificate Number 60537. Applicant intends to relinquish its certificate.

The Application: Application of Centramedia Online Services for an Amendment to its Service Provider Certificate of Operating Authority, Docket Number 34892.

Persons wishing to comment on the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than October 31, 2007. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 34892.

TRD-200704898
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: October 15, 2007

♦ ♦ ♦

Notice of Application for Waiver of Denial of Request for NXX Code

Notice is given to the public of the filing with the Public Utility Commission of Texas an application on October 11, 2007, for waiver of denial by the Pooling Administrator (PA) of AT&T Texas' request for one growth block in the Lewisville rate center.

Docket Title and Number: Petition of AT&T Texas for Waiver of Denial of Numbering Resources in the Lewisville Rate Center; Docket Number 34904.

The Application: AT&T Texas submitted applications to the PA for the requested blocks in accordance with the current guidelines. The PA denied the request because AT&T Texas did not meet the month-to-exhaust and utilization criteria established by the Federal Communications Commission.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than November 1, 2007. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 34904.

TRD-200704916
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: October 16, 2007

♦ ♦ ♦

Railroad Commission of Texas

Request for Comments on Certain Railroad Commission Oil and Gas Division Forms

The Railroad Commission of Texas requests comments on certain Oil and Gas Division forms as part of the proposed amendments to 16 TAC §3.50, relating to Enhanced Oil Recovery Projects--Approval and Certification for Tax Incentive, and §3.80, relating to Commission Oil and Gas Forms, Applications, and Filing Requirements, published in this issue of the *Texas Register.* The proposed amendments to §3.80 are found only in the Table and refer to new Form H-12A (Application for Certification for Additional Tax Rate Reduction for Enhanced Recovery Projects Using Anthropogenic Carbon Dioxide) and changes to Forms H-14 (Enhanced Oil Recovery Reduced Tax Annual Report), Form P-5LC (Irrevocable Documentary Blanket Letter of Credit), and Form P-17 (Application for Exception to Statewide Rules (SWR) 26 and/or 27) and its instructions. The Commission is requesting comments on both the proposed amendments to §3.50 and §3.80, and these proposed form changes.

RAILROAD COMMISSION OF TEXAS Oil and Gas Division	APPLICATION FOR CERTIFICATION for ADDITIONAL TAX RATE REDUCTION for ENHANCED OIL RECOVERY PROJECTS USING ANTHROPOGENIC CARBON DIOXIDE	**FORM H-12A** 10-2007

1. OPERATOR NAME, exactly as shown on P-5 Organization Report	2. OPERATOR P-5 NO.	3. RRC DISTRICT NO. AND COUNTY

4. MAILING ADDRESS, including city, state and zip code

5. STATUS OF ENHANCED RECOVERY PROJECT - In order to qualify for certification for additional tax rate reduction, the project must qualify under Tax Code, §202.054

☐ Enhanced Recovery Project is an existing, certified project

Certification Number: _____ and Date: _____

Submit a copy of the Railroad Commission Certification

☐ Enhanced Recovery Project is new

Submit this Form H-12 A with the Form H-12 requesting certification under Tax Code, §202.054

6. CARBON DIOXIDE TO BE USED IN THIS PROJECT:

☐ is captured from an anthropogenic source in Texas.

☐ would otherwise be released into the atmosphere as industrial emissions,

☐ is measurable at the source of capture; and

☐ will be sequestered in an oil or natural gas reservoir in Texas following the enhanced recovery process.

7. SOURCE OF CARBON DIOXIDE:

Name of Facility Owner: _____

Name of Facility: _____

Location of Facility: _____

8. PERCENTAGE OF INJECTION FLUID THAT IS ANTHROPOGENIC CARBON DIOXIDE: _____ %

9. REQUIRED ATTACHMENTS:

☐ DESCRIPTION OF HISTORICAL RELEASE OF CARBON DIOXIDE AT SOURCE FACILITY.

☐ DESCRIPTION OF METHOD OF CAPTURE OF THE CARBON DIOXIDE AND THE METHOD AND ACCURACY OF MEASUREMENT OF CARBON DIOXIDE THAT IS CAPTURED AT THE SOURCE.

☐ DESCRIPTION OF PLANNED SEQUESTRATION PROGRAM TO ENSURE THAT AT LEAST 99 PECENT OF THE ANTHROPOGENIC CARBON DIOXIDE WILL REMAIN SEQUESTERED FOR AT LEAST 1000 YEARS. Must include a description of monitoring and verification measures to be used for a period sufficient to demonstrate whether the sequestration programming is performing as expected.

CERTIFICATION

I declare under penalties prescribed in §91.143 Texas Natural Resources Code, that I am authorized to make this application, that it was prepared by me or under my supervision and direction, and that the data and facts stated herein are true, correct, and complete to the best of my knowledge.

Signature _____ Title _____

Name (Print or type) _____ Date _____ Phone (_____) _____

---- RRC USE ONLY ----

☐ **APPLICATION APPROVED** ☐ **APPLICATION DENIED**

ACTION DATE: _____ RRC SIGNATURE: _____

RAILROAD COMMISSION OF TEXAS
Oil and Gas Division

READ INSTRUCTIONS ON BACK

ENHANCED OIL RECOVERY REDUCED TAX ANNUAL REPORT

FORM H - 14
rev. 10/2007
~~February 1993~~

1. Operator name exactly as shown on P-5 Organization Report	2. P-5 No.	3. Proj. No. F-	4. Dist. No.	5. County
6. Operator address including city, state, and zip code	7. Field Name exactly as on Proration Schedule			8. Report Period (M/Y - M/Y)
	9. RRC certified positive response date			10. H-13 approval date

11. Type of Project: ☐ NEW Cumulative amount of oil produced since response certification date: _____ bbls

☐ EXPANDED Cumulative amount of *incremental* oil produced since response certification date: _____ bbls

12. Lease Information (see Inst. 4)

Lease Name, exactly as shown on Proration Schedule	RRC Lease No.	No. of Active Wells		Fluid Injected (vol/yr)	~~Anthropogenic CO_2 Injected (vol/yr)~~	Qualified Oil Prod. (bbl/yr)
		Injection	Producing			

13. Attachment Checklist ☐ Project and lease production and injection graphs with supporting data (see Inst. 5a) ☐ Others, as necessary (see Instr. 5b and 5c)

CERTIFICATION

I declare under penalties prescribed in Sec. 91.143, Texas Natural Resources Code, that I am authorized to make this application, that it was prepared by me or under my supervision and direction, and that the data and facts stated herein are true, correct, and complete to the best of my knowledge.

Signature _____ Title _____

Name
(print or type) _____ Date _____ Phone (___) _____

TO: RAILROAD COMMISSION OF TEXAS
Attention: Oil & Gas Division
Permitting/Production, P-5 Financial Assurance Section
P.O. Box 12967
Austin, TX 78711-2967

P-5LC
rev. 2007 [~~2/2001~~]

IRREVOCABLE DOCUMENTARY BLANKET LETTER OF CREDIT

We hereby establish our Irrevocable Documentary Blanket Letter of Credit in favor of the Railroad Commission of Texas, Austin, Texas for the account of _____ (operator's name), for the aggregate amount of _____ Dollars ($_____) available by your drafts at sight on the bank when drawn in accordance with the terms and accompanied by the documents listed below:

A. This Blanket Letter of Credit is issued in connection with the filing of a P-5 Organization Report (P-5) with the Commission as required by §91.142, Texas Natural Resources Code (TNRC) in order to perform operations within the jurisdiction of the Railroad Commission of Texas, including but not limited to (1) operations listed in the Commission's P-5 Organization Report records (P-5 records) for the operator, and/or (2) wells listed on the Commission's Oil and Gas Proration Schedules (Schedules), and any additional wells that may be obtained prior to the expiration of this Blanket Letter of Credit and carried on the Oil and Gas Proration Schedules. Said P-5 records and Schedules are incorporated herein by reference as if fully set forth at length.

1. Organization Name, exactly as shown on Form P-5 Organization Report.	2. P-5 Number, if assigned.	3. Total # of operator's wells:	Total aggregate depth of all wells:
4. Other Commission-regulated operations. See bond instruction sheet, Paragraph F. [Check appropriate operations; example: operating a pipeline= I] (A) ___ (B) ___ (C) ___ (D) ___ (E) ___ (F) ___ (G) ___ (H) ___ (I) ___ (J) ___ (K) ___ (L) ___	Other operations not included in (A)-(L).		

B. The operator and the issuer of this Blanket Letter of Credit acknowledge and agree that, due to amendments to the Texas Natural Resources Code, amendments to Commission Rules, and/or changes to the operator's Commission-regulated operations, including without limitation the acquisition of additional wells, operator may be required during the effective term of this Blanket Letter of Credit to provide additional financial security beyond the face amount of this Blanket Letter of Credit before its P-5 Organization Report will be accepted and approved.

C. This Blanket Letter of Credit is specifically issued at the request of the operator as guaranty that this fund will be available during the time that the operator is performing Commission-regulated operations. We are not a party to, nor bound by, the terms of any agreement between you and the operator out of which this Blanket Letter of Credit may arise.

D. Drafts drawn under this Blanket Letter of Credit must be accompanied by an affidavit from the Railroad Commission of Texas or an authorized representative, stating that:

1. a well or other oil and gas operation or activity subject to this Letter of Credit is likely to pollute or is polluting any ground or surface water or is allowing uncontrolled escape of formation fluids from the strata in which they were originally located; or

2. a well or other oil and gas operation or activity subject to this Letter of Credit is not being maintained in compliance with Commission rules or state law relating to plugging or the prevention or control of pollution; or

3. a well or other oil and gas operation or activity subject to this Letter of Credit is not polluting any ground or surface water or allowing uncontrolled escape of formation fluids from the strata in which they were originally located, but the operator has failed to maintain current operator status as reflected on the Commission's P-5 records;

AND

4. the draft is in the estimated cost of plugging each well (an amount otherwise impossible to determine as to the exact amount but which is estimated by multiplying the total depth by $2.50 per foot), closing any other operation or activity or controlling, abating, or cleaning up pollution.

We will be entitled to rely upon the statements contained in the affidavit and will have no obligation to independently verify any statements contained therein.

(over)

Each draft hereunder must be endorsed on the reverse side of this Blanket Letter of Credit, and this Blanket Letter of Credit must be attached to the last draft when the credit has been exhausted. Drafts may be presented at the office of this bank no later than 2:00 p.m. (local time) on _____ , 20 ___ (date must be 90 days after the operator's P-5 expiration date), and bear the clause "Drawn under the _____ (Bank name), Bank Letter of Credit No. _____ , dated _____."

We hereby engage with the bona fide holders of this draft and/or documents presented under and in compliance with the terms of this Blanket Letter of Credit that such draft and/or documents will be duly honored upon presentation to us.

Our obligations hereunder shall not be subject to any claim or defense by reason of the invalidity, illegality, or unenforceability of any of the agreements upon which this Blanket Letter of Credit is based. This Documentary Blanket Letter of Credit is subject to the "Uniform Customs and Practice for Documentary Credits" (2007 [~~1993~~] Revision) fixed by the International Chamber of Commerce (Publication #600 [~~500~~]), when not in conflict with the express terms hereof or with the provisions of Article Five of the Texas Business and Commerce Code.

Bank Name: _____

By: _____

(Name): _____

(Title): _____

(seal)

ATTEST:

( ) _____
Tel: Area Code Number

Address of Bank:

_____ _____
Assistant Cashier or Cashier

_____ _____
Date: month day year

P-5LC rev. 2/2001

☐ New ☐ Amended Existing Permit No. _____ Effective Month/Year of Requested Exception: _____ / _____	RAILROAD COMMISSION OF TEXAS OIL AND GAS DIVISION APPLICATION FOR EXCEPTION TO STATEWIDE RULES (SWR) 26 AND/OR 27 DRAFT 07-24-07	FORM P-17 Eff __/2007 $150 FILING FEE District _____ County _____

SECTION 1. OPERATOR INFORMATION (See instructions under "Who Files")

Operator Name (as shown on P-5): _____ Operator P-5 No. _____

Operator Address: _____ City, State, Zip: _____

SECTION 2. GATHERER (of oil or condensate) INFORMATION (not required if 3b is checked)

Gatherer Name (as shown on P-5): _____ Gatherer P-5 No. _____

Gatherer Address: _____ City, State, Zip: _____

Gatherer E-mail Address: _____
(Optional – If provided, e-mail address will become part of this public record.)

SECTION 3. APPLICATION APPLIES TO (*CHECK ALL THAT APPLY*): ☐ OIL ☐ CASINGHEAD GAS ☐ GAS WELL GAS ☐ CONDENSATE

a. ☐ Gas well full well stream into common separation and storage facility with liquids reported on Form PR.
b. ☐ Gas well full well stream into a gasoline plant/common separation and storage facility with liquids reported on Form R-3 Serial #_____ (If full well stream is checked, the results of periodic tests to determine the number of stock tank barrels of liquid hydrocarbons recovered per 1,000 standard cubic feet of gas must be reported on Form G-10 in accordance with SWR 55. Attach an explanation of any exceptions to SWR 55.)
c. ☐ Condensate and low-pressure Gas Well Gas are commingled into low-pressure separation and storage facilities.
d. ☐ This request is for off lease ☐ storage ☐ separation ☐ metering.
e. ☐ This exception is for common storage.
f. ☐ This exception is for common separation.
g. ☐ This exception is for casinghead gas metering and ☐ deduct metering.
h. ☐ This exception is for gas well gas metering and ☐ for a deduct metering.
i. ☐ This request is an exception to measure liquid with a: *(check one below)*
☐ a Turbine Meter or ☐ a Coriolis Meter (an additional $150.00 and a letter of explanation is required for each exception.)

SECTION 4. NOTICE REQUIREMENTS AND ALLOCATION METHOD. (*CHECK ALL THAT APPLY*) The following questions determine if 21-day notice is required and applies to all wells proposed for commingling:

a. ☐ The production is measured separately from all leases or individual wells before commingling. *(Notice not required; Skip to Section 5)*
b. ☐ The royalty interests and working interests are the same with respect to identity and percentage. *(Notice not required)*
c. ☐ The royalty interests and working interests are not the same with respect to identity and percentage. *(Notice required)*
If b. or c. checked, how will production be allocated? ☐ Form W-10 (oil) ☐ PD Meter (oil and condensate) ☐ Form G-10 (gas)
d. ☐ The wells produce from multiple reservoirs. *(Notice required unless 4e. or 4f. apply; see instructions for additional requirements)*
e. ☐ The wells produce from multiple reservoirs and have SWR10 exceptions. *(Notice not required)*
f. ☐ The wells produce from multiple reservoirs and are measured separately from each reservoir. *(Notice not required)*
g. ☐ Any one of the wells proposed for commingling produces from a Commission-designated reservoir for which special field rules have been adopted. *(Notice required)*

SECTION 5. ☐ **Wells proposed for commingling have an operator's name other than the applicant listed in SECTION 1.** *(See instructions)*

SECTION 6. ☐ **The production from all oil wells on each oil lease is to be commingled.** *(See instructions)*

SECTION 7. IDENTIFY LEASES AS SHOWN ON COMMISSION RECORDS (attach additional pages as needed)

DISTRICT	RRC IDENTIFIER	ACTION	LEASE AND FIELD NAME	WELL NO.
		☐ Existing ☐ Add ☐ Delete		
		☐ Existing ☐ Add ☐ Delete		
		☐ Existing ☐ Add ☐ Delete		
		☐ Existing ☐ Add ☐ Delete		

ATTACH ADDITIONAL PAGES AS NEEDED. ☐ No additional pages ☐ Additional pages _____ (# of additional pages)

CERTIFICATE: I declare under penalties in Sec. 91.143, Texas Natural Resources Code, that I am authorized to file this application, that this application was prepared by me or under my supervision and direction, and that the data and facts stated therein are true, correct, and complete to be the best of my knowledge. I certify that all requests for related required approvals from other affected State Agencies have been submitted and that I understand that any authorization granted by Commission approval of this application is contingent upon the approvals from other affected State Agencies being obtained.

Signature_____ **Title**_____ **Date**_____
Operator E-mail Address: _____ Operator Phone No. _____
(Optional – If provided, e-mail address will become part of this public record.)

RRC USE ONLY

Commingling Permit No. **Approval date:** **Approved by:**

RAILROAD COMMISSION OF TEXAS
OIL AND GAS DIVISION

FORM P-17 ATTACHMENT
DRAFT 07-24-2007

ATTACHMENT FOR APPLICATION FOR EXCEPTION TO STATEWIDE RULES (SWR) 26 AND/OR 27

SECTION 7. (CONT'D) IDENTIFY LEASES AS SHOWN ON COMMISSION RECORDS (attach additional pages as needed)

DISTRICT	RRC IDENTIFIER	ACTION	LEASE AND FIELD NAME	WELL NO.
		☐ Existing ☐ Add ☐ Delete		
		☐ Existing ☐ Add ☐ Delete		
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PAGE ____ OF _____

FORM P-17 INSTRUCTIONS

REFERENCE: STATEWIDE RULES 26, 27, 55, 71

Effective __-20076

Draft 07-24-200708-07-06

REVIEW AND BECOME FAMILIAR WITH SWR 26 AND SWR 27 BEFORE FILING FORM P-17.
FOR ADDITIONAL INSTRUCTIONS PLEASE CONSULT
THE PERMITTING & PRODUCTION SERVICES FILING PROCEDURES MANUAL.

GENERAL

WHEN TO FILE. Oil/condensate and natural gas production must be measured prior to leaving the lease and/or custody transfer. Liquid production from each lease/gas well must be placed in a separate stock tank if stored on the lease prior to custody transfer. An exception to individual lease/gas well metering and storage may be requested by filing Form P-17 with supporting documentation as required.

WHO FILES. An operator of oil and gas production under authority of the Commission P-5 who is responsible for compliance with statewide Rules 26, 27, and/or 55 files Form P-17 in accordance with these instructions.

COMPLIANCE. In order to file a Form P-17, the applicant must have on file with the Railroad Commission (RRC) a current P-5 Organization Report and financial assurance (if required) and must be in compliance with all RRC rules and orders. The applicant must be the operator of the commingled facility as shown in SECTION 1 on Form P-17.

WHERE AND WHAT TO FILE. File the original and two copies of Form P-17 and any required attachments and fees with the Railroad Commission by hand delivery or mail to the following address: Railroad Commission of Texas, P. O. Box 12967, Austin, Texas 78711-2967.~~, OR electronically online at www.rrc.state.tx.us. If you file electronically, attach any required documents scanned and saved in a TIF format in black and white at 200 DPI~~

FEES. A **filing fee of $150 is required** with each Form P-17. An additional $150 filing fee is required for each request of an exception to meter oil or condensate with a **Turbine meter or Coriolis meter**. ~~No fee is required when filing for the sole purpose of deleting a lease or gas ID.~~ Fees are non-refundable. Make checks or money orders payable to "Railroad Commission of Texas." The Commission also accepts payment by credit card. For information about payment by credit card, see http://www.rrc.state.tx.us/other-information/crcard.html.

PURPOSE OF FILING. File Form P-17 as provided for in Statewide Rules 26, 27 and 55 for the following:

(1) surface commingling of oil, condensate or a combination of oil and condensate production into a common facility OR a common facility with liquids reported on Form PR (these are the only commingling situations in which a permit number will be assigned for reporting on Form-PR, Production Report);
(2) production of gas wells full well stream to a plant / common facility with liquids reported on Form R-3;
(3) gas metering exceptions;
(4) off-lease separation/storage/metering.
(5) amending an existing surface commingling permit (complete SECTIONS 1 through 6 of Form P-17).

File Form P-17 to amend an existing surface commingling approval if a lease consolidation, unitization, field transfer, or work-over/re-completion of a surface commingled lease/gas well occurs. In addition, stock on hand must be transferred on the Form PR.

IMPORTANT TERMS

Common separation and storage: production from two or more leases or wells is combined into one separating device/facility with the liquids placed in common storage.

Common storage only: when each commingled lease or well has a separating device and the liquids are stored in a common tank after individual separation.

Deduct Metering: a method of allocating production to a non-metered gas well by subtracting other individually measured well volumes from the total measured gas volume.

District and County (top, right-hand corner): the Railroad Commission District and County where the commingling facility is physically located.

Effective Month/Year of Requested Exception (top, left-hand corner): the initial month of surface commingling (or amendment/change effective month) and the reporting of commingled production on a combined report. The "effective Month/Year" is the month that commingling actually begins.

Effective month of deletion: When a lease/well becomes inactive and must be deleted from a permit, all stock on hand must be disposed of before filing an amended Form P-17 to delete the lease/well. The effective month of deletion should be the month following the month of the last disposition of production. When discontinuing the operating and reporting of facilities, the Commission and the gatherer must be notified of the effective month of permit cancellation.

Location plat: a plat that shows the location of all leases involved in the application. A location plat is required with a Form P-17 for (1) off lease storage of oil or condensate or (2) off lease metering of gas or liquids. The location plat should show the approximate location of L.A.C.T. units, meters, tank batteries, and any other separation, metering, or storage facilities involved in the surface commingling application.

RRC Identifier: all existing or new oil lease numbers, gas identification numbers, or drilling permit ~~API~~ numbers as applicable on Form P-17.

INSTRUCTIONS FOR SECTION 3. REQUEST TO COMMINGLE

BOX 3.a. When **producing a gas well full well stream into a common facility with condensate reported on Form PR**, the Form P-4 should show both a gas gatherer and a condensate gatherer. A commingling permit number will be assigned and must be reported on Form PR for the individual wells.

BOX 3.b. When **producing a gas well full well stream to a gasoline plant or common facility where condensate is reported on Form R-3**, the Form PR for the well should show only the full well stream gas production volume and no condensate. The Form P-4 should designate a "full well stream" gatherer but no condensate gatherers. The commingling occurs at the facility reported on Form R-3, Monthly Report for Gas Processing Plants. A permit number is not issued for this type of commingling and is not reported on the Form-PR.

BOX 3.d. When requesting **off lease separation and/or storage of liquids or off lease metering**, show only the lease requesting off lease authority on the Form P-17 and attach a location plat showing the location of the facilities. Do not list the lease on which the facilities are to be located.

INSTRUCTIONS FOR SECTION 4. NOTICE REQUIREMENTS AND ALLOCATION METHOD

Notice of application (NOA) is NOT required if you check any one of BOXES **4.a, 4.b, 4.e or 4.f**.

Notice of Application (NOA) IS required if you check BOX 4.c. If the royalty and working interest owners of all leases producing into the common separation and/or storage facility are not the same and you do not meter before commingling, you must provide a 21-day notice of this application to, or waivers of objection from, the royalty and working interest owners in accordance with SWR 26(b)(1)(C).

In addition, if you DO NOT check BOX 4.a., you must indicate the method of allocation of production in accordance with SWR 26(b)(3). ATTACH to this FORM P-17 a diagram/schematic that shows all meters, separators, and other production equipment where production from each well is separated, metered, and/or commingled.

ADDITIONAL notice of application (NOA) IS required if you check BOX 4.d. and/or 4.g., but do NOT check BOXES 4.e, & 4.f. If the wells proposed for commingling produce from multiple reservoirs or any one of the wells proposed for commingling produces from a Commission-designated reservoir for which special field rules have been adopted, you must provide additional notice of the application **to all offset operators** of adjacent tracts having one or more wells producing from the same reservoirs (SWR 26(b)(4). ATTACH to this Form P-17 an Affidavit stating that notice of the application was sent by certified mail or that waivers of objection were received.

INSTRUCTIONS FOR SECTION 5 NAME OF WELL OPERATOR.

Check the BOX in SECTION 5 if the operator of any well proposed for commingling is different from the operator listed in SECTION 1 of the Form P-17. If you check this box, ATTACH a listing of the name of each **"other" operator** and Form P-5 operator number and, for each operator, all the information required under SECTION 7 of the Form P-17.

INSTRUCTIONS FOR SECTION 6 PRODUCTION OF ALL OIL WELLS TO BE COMMINGLED.

CHECK the box in SECTION 6 if **all producing wells listed** under all specific oil lease numbers on the proration schedule for the effective month **are being commingled** under this application. If this box is checked, individual well

numbers for each oil lease number listed under SECTION 7 do not need to be listed. DO NOT CHECK the box in SECTION 6 if only part of the wells under any oil lease number is commingled under this application.

INSTRUCTIONS FOR SECTION 7 LEASES SHOWN ON PRORATION SCHEDULE.

DISTRICT: Indicate the Commission district associated with the RRC identifier.

RRC IDENTIFIER: For new applications, list each RRC oil lease or gas ID number to be surface commingled. If the lease or ID number has not yet been assigned, list the drilling permit ~~API~~ number ~~(three digit county code with five digit unique number)~~ of the wells proposed for commingling. If more space is needed, complete the list of leases on an additional page and attach it to Form P-17.

ACTION ~~REQUIRED~~: List all existing ~~only those~~ leases or wells and all wells that are being added to or deleted from the permit and check the appropriate box to indicate the action ~~required~~.

LEASE NAME: Indicate the name of the lease. If the lease identifier is pending, also provide the field name ~~and number~~.

WELL NO.: When only part of the wells on a given oil lease are commingled, list the individual well numbers to be commingled in the "Well No." column. If the wells exceed the space provided, ATTACH a list to the Form P-17. It is not necessary to list the gas well numbers because gas leases only have one well. If all of the wells of an oil lease are being included, the word "all" can be inserted in the "Well No." column as opposed to listing each well.

COMMISSION APPROVAL OF FORM P-17:

~~The Railroad Commission will send to the applicant notification of Form P-17 approval, which will list all commingled leases/wells, and will represent in whole, the surface commingling authority granted by the Commission.~~

Upon approval of the Form P-17, the Railroad Commission will mail an approved copy to both the applicant and the gatherer.

Any exception to Statewide Rule 26 or 27 granted by the Railroad Commission through the approval of a Form P-17 is contingent on the applicant obtaining all related required approvals from other affected State Agencies.

In addition, if a protest is registered with the Railroad Commission concerning the installation and/or operation of the facilities approved at any time following approval, the exception to SWR 26 and/or 27 shall be subject to cancellation by the Railroad Commission if, after due notice and hearing, cancellation is justified.

Comments on the proposed amendments to §3.50 or §3.80 or these proposed forms included in this notice may be submitted to Rules Coordinator, Office of General Counsel, Railroad Commission of Texas, P.O. Box 12967, Austin, Texas 78711-2967; online at www.rrc.state.tx.us/rules/commentform.html; or by electronic mail to rulescoordinator@rrc.state.tx.us. The Commission will accept comments until 5:00 p.m. on Monday, November 26, 2007, which is 31 days after publication in the *Texas Register*, and encourages all interested persons to submit comments on the forms no later than this deadline. The Commission cannot guarantee that comments submitted after the deadline will be considered. For further information, call Ms. Leslie Savage at (512) 463-7308. The status of Commission rulemakings in progress is available at www.rrc.state.tx.us/rules/proposed.html.

Issued in Austin, Texas, on October 9, 2007.

TRD-200704856
Mary Ross McDonald
Managing Director
Railroad Commission of Texas
Filed: October 11, 2007

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Sul Ross State University

Request for Proposals

Pursuant to Texas Government Code, Article 2254, Sul Ross State University, a member of the Texas State University System, announces the solicitation for consultant services to advise and assist with the management and administration of a GEAR UP Grant.

Project Summary: Sul Ross State University Rio Grande College is applying for a federally funded GEAR UP grant. The GEAR UP program will serve approximately 700 7th graders from fall 2008 through a summer college bridge program following high school graduation in 2014. The project will develop individual education plans for each targeted student to identify students' unique needs and specify services to meet those needs. Tutoring, after-school programs of academic success skills and field trips to historical and cultural sites, annual week-long summer programs of intensive instruction, college and financial aid workshops and individual college counseling sessions, mentoring, and 21st century scholar events are designed to meet their needs. A broad-based faculty development program of workshops and supporting self-study will address effective instructional techniques. The successful vendor will share in the responsibility for assurance of the attainment of the grant objectives, compliance with the terms and conditions of the grant and will provide services such as assistance in

budget management, consultations, performance reporting, and review and editing of reports. Similar services have previously been provided by a consultant. Sul Ross State University intends to award the contract for the consulting services to a previously used consultant unless a better offer is received.

In accordance with the provisions of V.C.T.A. Government Code Sec. 2254.028 (c), the president of Sul Ross State University has approved the use of a private consultant and has determined that the required fact exists.

Proposals are to be received no later than 4:45 p.m., Monday, November 12, 2007. A copy of the request for proposal packet is available upon request from Patty Roach, Director of Purchasing, Sul Ross State University, P.O. Box C-116, Alpine, Texas 79832, phone (432) 837-8045, fax (432) 837-8046.

Vendors will be evaluated on credentials for the work to be done, previous successful experience on similar grant projects and interpersonal and written communication skills. Proposals will be evaluated on the fulfillment of the requirements as outlined in the specifications, a fee schedule which is appropriate to the proposed activities, and the quality of performance on previous contracts or experience on similar projects.

The University reserves the right to reject any and all proposals received if it is determined to be in the best interest of the University. All material submitted in response to this request becomes the property of the University and may be reviewed by other vendors after the official review of the proposals.

TRD-200704940
Patty Roach
Director of Purchasing
Sul Ross State University
Filed: October 17, 2007

♦ ♦ ♦

WorkSource-Greater Austin Area Workforce Board

Request for Proposals

WorkSource-Greater Austin Area Workforce Board has issued a Request for Proposals for Website Design, Hosting, and Maintenance services. WorkSource is a non-profit corporation with a 501(c)(3) tax-exempt status from the Internal Revenue Service. WorkSource is governed by a twenty-seven (27) member board of directors representing business, labor, education, economic development, community-based organizations, and government.

The proposer selected as a result of this RFP will provide website and e-newsletter design, hosting, and maintenance services to WorkSource. Services to be provided include, but are not limited to the following:

-Website and e-newsletter redesign and set-up

-Website and e-newsletter hosting

-Electronic e-newsletter distribution

-Ongoing website support and maintenance

-Monthly maintenance and support

-Site hosted with server maintenance that is hardened and secure

-Upgrades and patches

-Reporting services

-Technical support

-Back-ups

-Scaleable, dedicated Internet bandwidth

-Newsletter distribution, hosting and archives

-Domain Name

-Content Control

-Site Backup

-Security

-Server Logs and Web Site Statistics

For a copy of the RFP or other information contact: Weston Sythoff at weston.sythoff@twc.state.tx.us.

TRD-200704920
Niki Sanders
Executive Assistant/HR
WorkSource-Greater Austin Area Workforce Board
Filed: October 16, 2007

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How to Use the Texas Register

Information Available: The 14 sections of the ***Texas Register*** represent various facets of state government. Documents contained within them include:

Governor - Appointments, executive orders, and proclamations.

Attorney General - summaries of requests for opinions, opinions, and open records decisions.

Secretary of State - opinions based on the election laws.

Texas Ethics Commission - summaries of requests for opinions and opinions.

Emergency Rules- sections adopted by state agencies on an emergency basis.

Proposed Rules - sections proposed for adoption.

Withdrawn Rules - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.

Adopted Rules - sections adopted following public comment period.

Texas Department of Insurance Exempt Filings - notices of actions taken by the Texas Department of Insurance pursuant to Chapter 5, Subchapter L of the Insurance Code.

Texas Department of Banking - opinions and exempt rules filed by the Texas Department of Banking.

Tables and Graphics - graphic material from the proposed, emergency and adopted sections.

Transferred Rules- notice that the Legislature has transferred rules within the *Texas Administrative Code* from one state agency to another, or directed the Secretary of State to remove the rules of an abolished agency.

In Addition - miscellaneous information required to be published by statute or provided as a public service.

Review of Agency Rules - notices of state agency rules review.

Specific explanation on the contents of each section can be found on the beginning page of the section. The division also publishes cumulative quarterly and annual indexes to aid in researching material published.

How to Cite: Material published in the ***Texas Register*** is referenced by citing the volume in which the document appears, the words "TexReg" and the beginning page number on which that document was published. For example, a document published on page 2402 of Volume 30 (2005) is cited as follows: 30 TexReg 2402.

In order that readers may cite material more easily, page numbers are now written as citations. Example: on page 2 in the lower-left hand corner of the page, would be written "30 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 30 TexReg 3."

How to Research: The public is invited to research rules and information of interest between 8 a.m. and 5 p.m. weekdays at the ***Texas Register*** office, Room 245, James Earl Rudder Building, 1019 Brazos, Austin. Material can be found using ***Texas Register*** indexes, the ***Texas Administrative Code***, section numbers, or TRD number.

Both the ***Texas Register*** and the ***Texas Administrative Code*** are available online through the Internet. The address is: http://www.sos.state.tx.us. The ***Register*** is available in an .html version as well as a .pdf (portable document format) version through the Internet. For website subscription information, call the Texas Register at (800) 226-7199.

Texas Administrative Code

The ***Texas Administrative Code (TAC***) is the compilation of all final state agency rules published in the ***Texas Register***. Following its effective date, a rule is entered into the ***Texas Administrative Code***. Emergency rules, which may be adopted by an agency on an interim basis, are not codified within the ***TAC***.

The ***TAC*** volumes are arranged into Titles and Parts (using Arabic numerals). The Titles are broad subject categories into which the agencies are grouped as a matter of convenience. Each Part represents an individual state agency.

The complete TAC is available through the Secretary of State's website at http://www.sos.state.tx.us/tac. The following companies also provide complete copies of the TAC: Lexis-Nexis (1-800-356-6548), and West Publishing Company (1-800-328-9352).

The Titles of the ***TAC***, and their respective Title numbers are:

1. Administration
4. Agriculture
7. Banking and Securities
10. Community Development
13. Cultural Resources
16. Economic Regulation
19. Education
22. Examining Boards
25. Health Services
28. Insurance
30. Environmental Quality
31. Natural Resources and Conservation
34. Public Finance
37. Public Safety and Corrections
40. Social Services and Assistance
43. Transportation

How to Cite: Under the ***TAC*** scheme, each section is designated by a ***TAC*** number. For example in the citation 1 TAC §27.15: 1 indicates the title under which the agency appears in the ***Texas Administrative Code***; ***TAC*** stands for the ***Texas Administrative Code***; §27.15 is the section number of the rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).

How to update: To find out if a rule has changed since the publication of the current supplement to the ***Texas Administrative Code***, please look at the ***Table of TAC Titles Affected***. The table is published cumulatively in the blue-cover quarterly indexes to the ***Texas Register*** (January 21, April 15, July 8, and October 7, 2005). If a rule has changed during the time period covered by the table, the rule's ***TAC*** number will be printed with one or more ***Texas Register*** page numbers, as shown in the following example.

TITLE 40. SOCIAL SERVICES AND ASSISTANCE
Part I. Texas Department of Human Services
40 TAC §3.704.....950, 1820

The ***Table of TAC Titles Affected*** is cumulative for each volume of the ***Texas Register*** (calendar year).